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The Effect of Alberta Planning Board Subdivision Appeal Decisions upon the Attainment of Calgary Regional Planning Commission Policies in the Municipal District of Rocky View

by

W. Robert Black

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Date August 30, 1983

ABSTRACT

The land planning administration in Alberta is dominated by the Alberta Planning Board at the regional level. Under the Planning Act, 1977, the Board is responsible for the funding of regional planning commissions: their plans are reviewed by it prior to ratification and it retains the power, on appeal, to alter the decisions of the commissions concerning land subdivision applications. Thus, the Alberta Planning Board's role conforms to those of countless other central authorities in that it is able to draft policy, delegate authority, inspect policy implementation and grant variance to the policies it is responsible for.

Central bodies such as the Alberta Planning Board are not universally respected since their powers are usually of a strong character and they are thought to pose a threat to local autonomy and, in some cases, the rights of individuals. They have, however, been extensively utilized to bring order and uniformity to regulatory processes. The costs to local autonomy of such central direction are topics of active debate and it is the objective of this thesis to determine the impacts of the Board's appeal activities and variance granting powers upon the ability of the Calgary Regional Planning Commission, acting as planning agent for the Municipal District of Rocky View, to implement its land use policies.

In order to understand the nature of the relationship existing between the Planning Board and the Commission it is necessary to review the legislative background of selected central agencies concerned with planning and related fields. The legislative history of planning in Alberta, too, is discussed with particular emphasis upon the statutory obligations and powers of the Planning Board and the regional planning commissions.

The Calgary Regional Planning Commission was granted statutory authority in 1957 and began to implement planning policies without the aid of a plan. In 1963 the Commission's first preliminary regional plan was adopted. This plan was followed by a revised preliminary regional plan in 1972. Thus, the appeals made to the Planning Board in the 1960–78 period can be divided into three distinct periods conforming to the periods when there was no plan or when either of the preliminary regional plans was in effect. In each group, the Commission's land use policies are identified, as are the subdivision appeals made against them and the Planning Board's decisions respecting them. Overall, the examination illustrates the Commission's policy initiatives, its methods of policy

implementation and the Planning Board's acceptance or rejection at appeal of the local land use policies.

From the study, it was concluded that the Alberta Planning Board's appeal activities did not adversely affect the implementation of local land use policies in the M.D. of Rocky View. The Commission's policies became stronger over the study period, as the Board was in general agreement with the Commission's aims and the chosen methods of implementation. The Board's concept of the public interest, however, differed slightly with that of the Commission: the Board granted variances from the local policies whenever it could reasonably do so without abrogating their spirit and intent. The resulting relationship was a dynamic one which now seems to be threatened by the plan approval process in conjunction with the agitation of rural municipalities who wish to attain a stronger voice in the control of land use planning in their jurisdictions.

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I wish to express my sincere appreciation to my thesis adviser, Dr. P.J. Smith. His guidance and editorial skills have made this exercise very much more rewarding than it might otherwise have been.

Karen Sawchuck and the support staff of the Alberta Planning Board gave me access to the Board's registry of appeals and assisted greatly in the often tedious task of ordering files from their various storage locations. I thank them for their continued support and interest.

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Table of Contents

Chapter		Page
1.	INTRODUCTION	1
	1.1 Preamble	1
	1.2 The Role of Boards and Commissions in the Public Decision Making Process	1
	1.3 The Role of the Alberta Planning Board in the Administration of Planning	3
	1.4 The Ability of the Planning Board to Influence Planning Policy	5
	1.5 The Problem: The Notion of Conflict between the Planning Board and Regional Planning Commissions	7
	1.6 The Objective of the Thesis	7
	1.7 The Approach of the Thesis	8
	1.8 The Organization of the Thesis	8
	1.9 Sources of Information	11
2.	THE DEVELOPMENT OF CENTRALIZED PLANNING AUTHORITY	13
	2.1 Victorian Central Authority and the Limitation of Local Autonomy	13
	2.2 A Growth of Humanitarian Ideas	15
	2.3 The Growth of Centralized Authority: The Forebears of Planning	16
	2.4 The Development of Distinct Planning Legislation	19
	2.5 The Development of Centralized Planning Authority in Canada	23
	2.6 The Regulation of Land Use by a Canadian Central Authority	25
	2.7 The Rationale for the Use of Administrative Tribunals	27
3.	THE DEVELOPMENT OF A CENTRALIZED PLANNING AUTHORITY IN ALBERTA	31
	3.1 Introduction	31
	3.2 The Town and Rural Planning Advisory Board	31
	3.3 The Provincial Planning Advisory Board	36
	3.4 The Provincial Planning Board	38
	3.5 The Alberta Planning Board	42
4.	THE EARLY APPEAL FILES: 1960-1963	46
	4.1 Rationale for the Groupings of Files Studied	46
	4.2 The Relaxation of Subdivision and Transfer Regulation	46
	4.3 Subdivision Appeals and Board-Ordered Variance of Local Policies and Provincial Regulations	49

4.4 Interim Findings 58

5. ADVICE AND DISSENT: THE PRELIMINARY REGIONAL PLAN AND SUBDIVISION APPEALS 60

5.1 The Purpose of the Preliminary Regional Plan 60

5.2 The Division of the Appeals 67

5.3 Appeals Arising as a Result of the Preliminary Regional Plan 67

5.3.1 Subdivision Proposals Contrary to the Two-Parcel Policy 68

5.3.2 Subdivision Proposals Not Meeting Public Reserve Provision Guidelines 69

5.3.3 Subdivision Proposals Not Meeting Minimum Parcel Size Guidelines 72

5.3.4 Subdivision Proposals Not Meeting Land Use Guidelines 76

5.4 Appeals Arising From Other Causes 79

5.4.1 Subdivision proposals approved subject to Municipal District road construction provisions 79

5.4.2 Subdivision proposals approved subject to Department ofHighways limitations and provisions 84

5.4.3 Joint ownership subdivision proposal appeals 90

5.4.4 Controversy concerning the C.R.P.C. approval of outline plans 92

5.5 Interim Conclusions 94

6. MORE ADVICE AND DISSENT: THE SECOND PRELIMINARY REGIONAL PLAN AND SUBDIVISION APPEALS 97

6.1 The Objectives of the Second Preliminary Regional Plan 97

6.2 The Relationship Between the Preliminary Regional Plan and the Municipal District of Rocky View s General Plan 101

6.3 The Division of the Appeals 102

6.4 Appeals Arising as a Result of the Preliminary Regional Plan 103

6.4.1 Subdivision proposals not meeting land use guidelines 103

6.4.2 Subdivision proposals contrary to the two-parcel rule 117

6.4.3 Subdivision appeals not meeting minimum parcel size guidelines 118

6.4.4 Subdivision proposals not meeting public reserve provision guidelines 123

6.5 Appeals Arising From Other Causes 124

6.5.1 Subdivision proposals approved subject to Municipal District of Rocky View cash-in-lieu of public reserve land dedications 124

6.5.2 Subdivision proposals subject to Municipal District of Rocky View road construction provisions 127

6.5.3 Subdivision proposals approved subject to Department of Highways limitations and provisions 129

6.5.4 Subdivision proposals refused due to proximity to hydrogen sulfide and sulfur dioxide gas facilities 130

6.6 Interim Conclusions 132

7. SUMMARY AND CONCLUSIONS 137

8. BIBLIOGRAPHY 156

9. APPENDIX 1 : Denied Subdivision Appeals against the Farmland Conservation Policies 162

10. APPENDIX 2 : Approved Subdivision Appeals against the Farmland Conservation Policies 164

LIST OF MAPS

Map.....Page

No.1 The Location of the M.D. of Rocky View in Alberta 9

No.2 The M.D. of Rocky View..... 10

No.3 Chestermere Lake and Vicinity..... 51

No.4 Cochrane Lake and Vicinity, Tentative Plan of Subdivision for Appeal No. 61-C-11..... 54

No.5 Tentative Plan of Subdivision for Appeal No. 62-C-37... 56

No.6 The M.D. of Rocky View Generalized Zoning Map (1963)..... 66

No.7 Tentative Plan of Subdivision for Appeal No. 64-C-100... 81

No.8 Department of Highways Recommend Style of Service Road Access to Rural Residential Subdivisions..... 87

No.9 the M.D. of Rocky View Density District Map (1972)..... 98

No.10 Airdrie Airport and Vicinity..... 115

1. INTRODUCTION

1.1 Preamble

In one form or another statutory control of land use in Alberta has been possible since 1913. Early legislation was concerned with enabling urban authorities to draft planning schemes but later statutes extended this power to rural areas as well. In each case, land use planning and its controls represented an extension of authority into an area hitherto unaffected by government. Various agencies were created to administer planning statutes at the municipal, regional, and provincial levels, but this thesis is principally concerned with two of them: the Alberta Planning Board, acting at a provincial level, and the Calgary Regional Planning Commission, the planning agent for the Municipal District of Rocky View which is the locus of the case study.

The central purpose of the thesis is to attempt to understand the relationship between the Board and the Commission as it reflects the ability of the latter to implement its planning policies in the Municipal District. Yet, the Alberta Planning Board cannot be treated as a unique problem. Most boards seem to be caught up in a basic controversy by virtue of their contribution to public administration. Such general issues as central versus local control of policy formulation and implementation, the extension of executive power, and the proliferation of boards in all branches of administration since World War II, have prompted warnings of danger to the system of government and especially to the individual in that system. To gain a reasoned understanding of the concerns about boards in general, and a better understanding of the Alberta Planning Board in particular, it will be necessary to study the growth and development of planning-related administrative regulations and authorities and the conflicts they have faced.

1.2 The Role of Boards and Commissions in the Public Decision Making Process

The public decision is special. It differs from other types of decisions in that it should not be based on individual gain. The public decision is made to advance some greater public good as it is variously determined by individual public authorities.

The growth and entrenchment of popular government has been founded upon a belief in governance for the public good in response to public will. For this reason, the drafting and implementation of public policies has gradually given rise to a large and powerful branch of government (Brown and Steel, 1979, ch. 1). Typically it is composed of boards, commissions and their like, all established to articulate, research, enforce or otherwise secure the public good.

Individual public authorities vary in their composition and in their regulatory responsibilities. All, however, must address a public will. This will "is given expression by the electorate, interpretation by the legislature, and application by the administrative expert"(Vernon and Mansergh, 1940, p.22). Policies needing application by 'administrative experts' have not been in short supply. Administrations have grown as governments have expanded and assumed ever greater responsibilities for the people they govern (Willis, 1933, p.13).

A feature attendant upon this growth is the increased delegation of powers of execution to the administrative agencies of government. The sheer volume of statutes has been an incentive for this development (Brown and Steel, 1979, p.29). The present scope of administrative agencies is now so wide that it would be difficult to find an economic or social activity immune from their decisions. This has led to a situation where some administrative bodies have near-legislative powers. This began to cause alarm as early as the first quarter of this century and the topic is still actively debated (Lord Hewart of Bury, 1929).

Power is not distributed equally throughout the administrative system. Those groups within the public administration having the broadest role or scope tend also to have broad powers. Groups having to perform less broad or more defined tasks have usually fewer powers and may be subordinate to some other agency. Such a ranking of power and position can be shown by the relationships of boards and their respective commissions.

A board is "a body of persons, statutory or otherwise, having delegated to them certain powers or elected for certain purposes" (Burke, 1977). In the sense that they are used by provincial governments, boards most often advance and coordinate the implementation of one or more Acts of a legislature. For example, the Energy Resources

Conservation Board in Alberta has powers delegated to it by four statutes: The Energy Resources Conservation Act, 1971; The Oil and Gas Conservation Act, 1970; The Hydro and Electric Energy Act, 1971; and the Power Consumption Act, 1970 (Hudson and Ward, 1979, p.554). This board therefore functions as a hub for comprehensive planning and regulation of energy matters.

A commission, by contrast, is "an authority to do some act, it signifies an authority given by the crown, a court, or the like to a person or persons..."(Burke, 1977). When compared with a board, the jurisdiction of a commission is likely to be more narrowly defined and its powers less wide-ranging, but like the boards they may exist for an indefinite period. Commissions are usually more concerned with the implementation of policy than with the development of objectives and instruments of policy attainment. The respective roles of the A.P.B. and the C.R.P.C. illustrate this relationship to some extent. The Board's responsibility for implementing the Planning Act involves authority over the establishment, funding and broad policy direction of the regional planning commissions. They, in essence, only perform functions that are assigned by statute.

1.3 The Role of the Alberta Planning Board in the Administration of Planning

The Alberta Planning Board is a fairly typical board. It derives its powers from the Planning Act, 1977 (ch. 89) and its membership is determined by the Lieutenant Governor in Council which is, in actuality, the Cabinet of the legislature. Cabinet forms a political link with the Board and subsequently with several aspects of planning. In addition, the Board is directly responsible for its activities to the Minister of Municipal Affairs who, in turn, is accountable to the legislature.

In the most recent Planning Act the powers and duties of the Board were made less specific than they had been previously (Elder, 1979). Nonetheless, the Board's role in the interpretation and coordination of planning seems undiminished. It had previously been the Board's duty to advise the Lieutenant Governor in Council as to the making of regulations under the Act and with respect to the establishment and operation of regional planning commissions. Additionally, it was to discharge any duties or functions assigned to it by the Lieutenant Governor in Council. The present Act eschews any advisory designation, concentrating rather upon the Board as an appeal hearing body. This, however,

is not to suggest that the Board is no longer advisory; quite the contrary. "The Alberta Planning Board has a wide range of responsibilities from coordinating the functions and operations of the regional planning commissions to recommending land use policies to the Cabinet. It is the subdivision appeal body under The Planning Act, 1977 and also administers the Alberta Planning Fund, out of which the regional planning commissions are financed. Through committees of the Board, numerous special topics can be investigated and they have included monitoring of development in new towns, exploring the feasibility of new regional planning commissions, investigating new concepts in housing design and advising regional planning commissions on the preparation of regional plans"(Alberta, Department of Municipal Affairs, 1978).

The duties of the Board are distributed amongst three committees: the Research and Program Committee, the Finance and Administration Committee, and the Appeal and Waiver Committee (Alberta Planning Board, 1978). Under the Planning Act (s.16) a decision of any of these committees is deemed to be a decision of the Board.

The Research and Program Committee is "responsible for matters relating to lakeshore management plans, new towns, regional plans, airport vicinity protection area regulations, regional planning commission areas and membership, section 76 applications (dwelling units on a lot), plan cancellations, and such other matters as may be referred to it" (A.P.B., 1978). Its greatest potential impact upon planning policy is through its influence on the regional planning commissions and the review of regional plans.

The Planning Act, 1977, made the drafting of regional plans a mandatory responsibility for the regional planning commissions of the province (ch.89, s.45). Section 47 of the same Act provides the A.P.B. with the power to review and make recommendations on regional plans and plan amendments before they can be sent to the Minister for his ratification. This is to ensure that a "...commission does not give final approval or circulate to the public – a document which may contain policies which conflict with provincial programs or policies" (A.P.B., 1980). The Board also assesses the completeness and accuracy of technical information used during plan preparation. In addition, the review allows all regional plans and amendments to be evaluated against a set of uniform criteria which reflect government policies about the administration of planning.

The Finance and Administration Committee is "responsible for matters relating to the Board and regional planning commission budgets and financing, the Alberta Planning Fund, surveying and mapping, regional planning commission annual reports, and such other matters as may be referred to it" (A.P.B., 1978). The stewardship of the Alberta Planning fund is particularly important. The Board is entrusted with the collection of monies from municipalities served by the commissions and with the distribution of the levy. The payments finance the operations of regional planning commissions, as well as the preparation of regional plans and special plans and studies.

The Appeal and Waiver Committee is responsible for "...all appeal hearings and for considering applications from subdivision approving authorities for relief from compliance with specific sections of the subdivision regulations" (A.P.B., 1978). The committee is in intent and actuality a quasi-judicial tribunal. Its decisions carry the full weight of the law (Statutes of Alberta, 1977, ch.89, s.103) and an appeal of the committee's decision may only be taken to the Supreme Court of Alberta and then only upon a question of law or upon a question of jurisdiction. The Appeal and Waiver Committee is thus the court of last resort for a limited number of planning matters. Chief among these matters is the resolution of grievances arising out of the use of subdivision controls by the regional planning commissions. The subdivision controls are used in association with the regional plan to give it effect. That power is limited by the allowance of an appeal to the Board when applications for subdivision are not approved or are approved with conditions by a regional planning commission.

The appeal provides a forum for the regional planning commissions to defend their decisions and for individuals to plead for exception or variance from the subdivision controls. The Board's ability to grant variance is a strong power but one that is essentially limited to the subdivision process.

1.4 The Ability of the Planning Board to Influence Planning Policy

The Board's ability to influence planning policy is primarily vested in the Research and Program and Appeal and Waiver Committees. Moreover, as the efforts of the Board are directed toward the regional scale of planning, its influences are greatest on the regional planning commissions. This influence is exerted through regional plan approval

duties, and through appeal hearing decisions and potentially through the funding process. This gives the Board the opportunity to influence the regional planning process at two stages: prior to any plan or amendment being adopted and during the implementation of the plans. The Board's influence need not even be direct. It is reasonable to suppose that the very existence of the plan approval criteria is sufficient to affect the types of policies that are included in draft regional plans and the manner in which they are presented. In addition, the Board's discretionary funding of regional plans and special plans and studies gives it the potential to influence the undertaking of new planning initiatives.

For its part, the A.P.B. claims not to influence the substance of regional plan policies. "The plan approval criteria of the Board do not dictate the substance of policy to the regional planning commissions but only what policy areas should be covered, and the manner in which this should be done" (A.P.B., 1980). Still, it is difficult to believe that the plan approval criteria would have so little effect. There is a lot of latitude in the definition of "policies which conflict with provincial programs or policies".

The other major area of Board influence over regional policies involves the control of land subdivision. Subdivision controls and the regulation of land use are the regional planning commission's tools of plan implementation. A commissions' ability to influence the location and type of development gives rise to the physical realization of its plans. Unhappily, these controls also give rise to conflicts between individuals and commissions, most notably involving landowners who wish to subdivide their property. Such applications have a nearly automatic right of appeal should they be rejected by a regional planning commission. This then puts the dispute before the Appeal and Waiver Committee, which must make a decision either defending the commission or overruling it. If on a repeated basis, a control instrument policy is defended by the Board, it (and the policy it serves) is effectively strengthened. If, however, a regulation of a commission is repeatedly overruled, it must cease to have much real value and the whole planning policy may be brought into question. It is in the desire to test these ideas that the central purpose of the thesis is to be found.

1.5 The Problem: The Notion of Conflict between the Planning Board and Regional Planning Commissions

Ideally, the Alberta Planning Board and the regional planning commissions can be conceived as instruments of the public will working toward the achievement of public good. In reality the two administrative institutions experience conflict while serving the same general ideal. The problem is one of scale. Each body has a particular view of the public good and these views must on occasion diverge.

The Planning Board has a large mandate and its scale is province-wide. It must direct the efforts of subordinate institutions in order to fulfill desired goals. The commissions work at a smaller scale and their views of policy are essentially confined to their respective plan areas. The commissions deal only with the ideology of advancement of the public good. The Board, however, represents the point in the regional planning administration where the ideology of the advacement of the public good confronts the ideology of private rights in property (McAuslan, 1980, p.2). Conflict arises where the superior Board rules against the decisions of the inferior commissions.

1.6 The Objective of the Thesis

This study has been undertaken to investigate one facet of the relationship between the Alberta Planning Board and a regional planning commission. That is, it is designed to determine how the Board's judgements with respect to subdivision appeals in the Municipal District of Rocky View have influenced the development and implementation of regional planning policy on the part of the Calgary Regional Planning Commission. To this end, 'policy' is defined as a course of action adopted and pursued by a government or public agency in the service of some public good or benefit. In general practice (and the documents consulted for this thesis are no exception) the term policy is loosely used, but it is taken here to require a clear (and preferably explicit) set of ends or obejctives, along with an equally clear set of means or control instruments by which the ends can feasibly be achieved. Given the nature of the subdivision appeal process it is inevitable that the control instruments should be subject to greater challenge than the planning objectives. The research problem then becomes one of determining the extent to which local controls and regulations were overturned on appeal, and then assessing the implications for the

continuing state of regional planning policy.

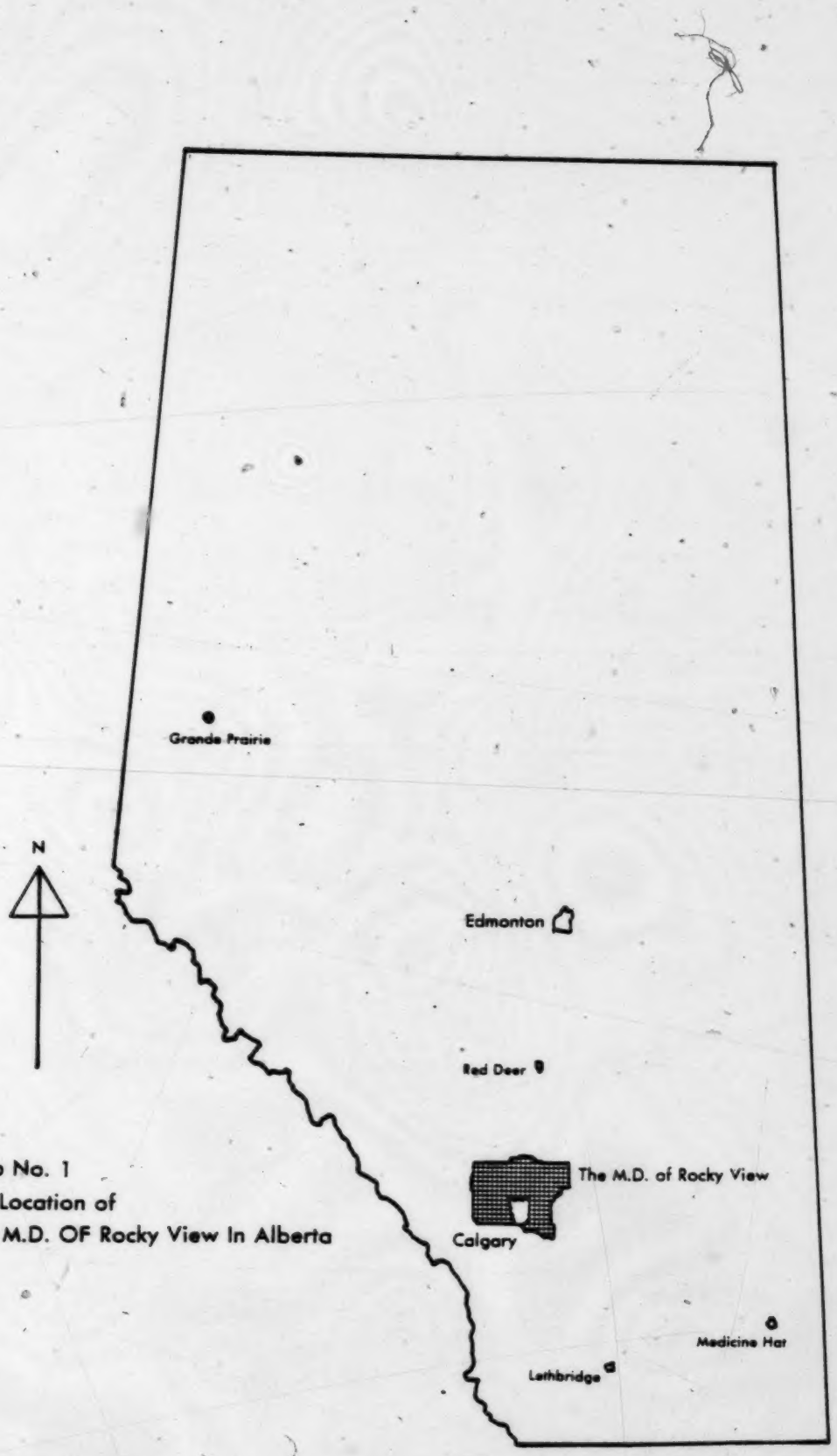
1.7 The Approach of the Thesis

To accomplish the aims of the study particular attention will be paid to major policy statements as they appear in the regional, and municipal plans prepared for the study area over an eighteen year period. Using these as a basis, the effects of the Appeal and Waiver Committee's decisions will be evaluated in terms of their undermining or reinforcing effect upon the local wishes.

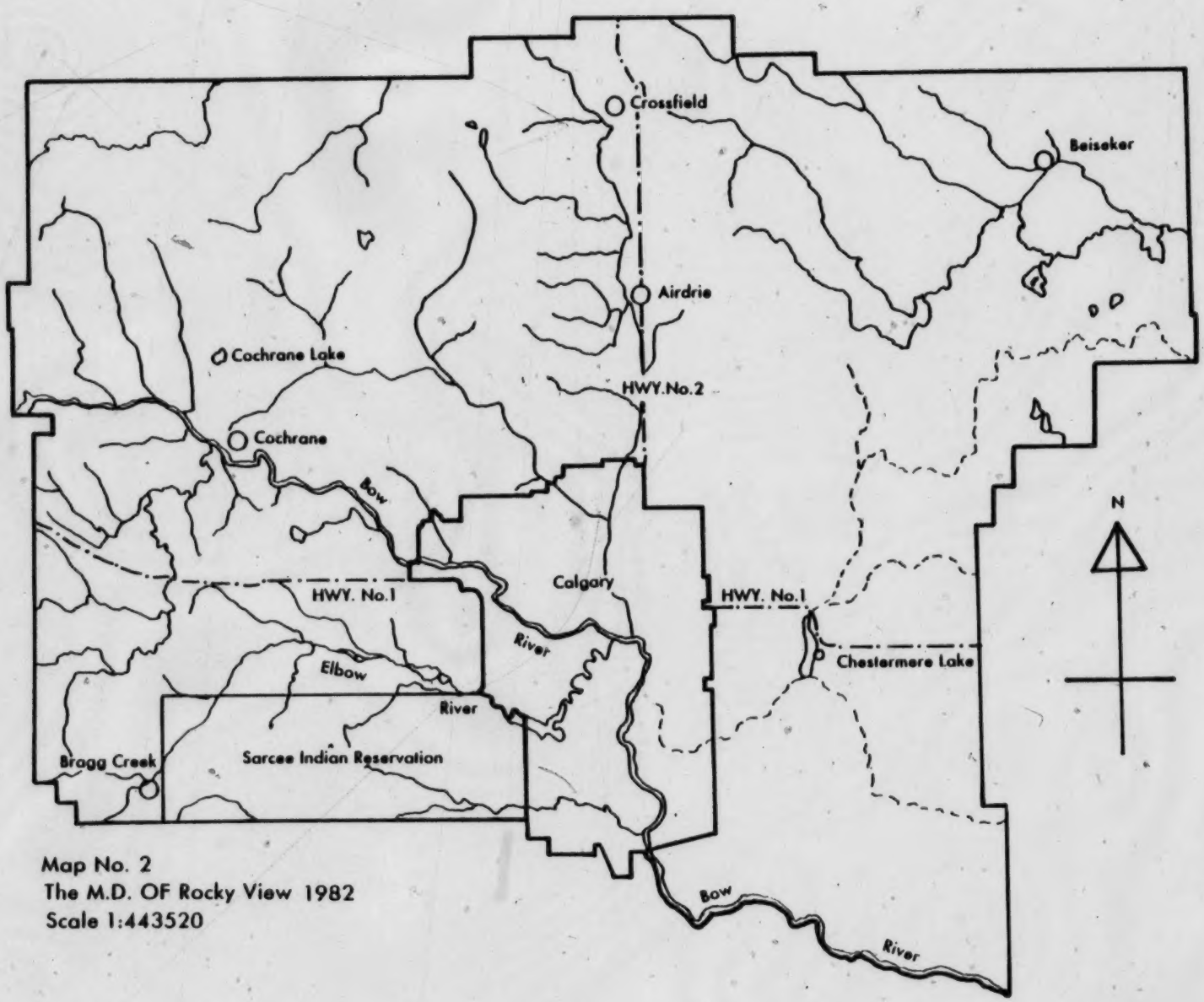
The Municipal District of Rocky View has been chosen as the study area as it has experienced substantial developmental pressures of various kinds. Parts of the district are subject to urban land use pressures yet the majority of the land is put to rural types of use (see Map no. 1 and Map no.2). The area relies heavily upon its agricultural land base for economic wellbeing and local policies reflect a desire to maintain the viability of the rural economy, chiefly by protecting the agricultural land base. That desire is made slightly more complicated since the area forms part of the hinterland of the City of Calgary. The City's own land use policies, however, seek to confine urban land uses to land under the direct control of the City. The Calgary Regional Planning Commission acting as a planning agent for the M.D. of Rocky View, and to a lesser extent for the City of Calgary, has consistently worked to achieve an effective separation of urban and rural land uses and to contain Calgary's growth into its rural environs. In this regard the commission has used subdivision controls to help give effect to the regional plan. The Commission has frequently refused or approved them with limiting conditions. requests for subdivision. Many of these have been the subjects of appeals to the Planning Board.

1.8 The Organization of the Thesis

To assess the Appeal and Waiver Committee's effects upon the implementation of the policies of the Calgary Regional Planning Commission (hereafter termed C.R.P.C.) in the Municipal District of Rocky View, attention must first be focused on the rationale for the establishment of centralized authorities. Chapter two will deal with the development of health and housing authorities and the emergence of central planning authorities. It is mostly English experience that will be reported on, but an example of a Canadian central



Map No. 1
The Location of
The M.D. OF Rocky View In Alberta



Map No. 2
The M.D. OF Rocky View 1982
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planning authority will also be included, and its duties and powers will be discussed. The third chapter will treat the development of the Alberta Planning Board, with particualr emphasis on the statutory changes affecting the Board. An analysis of the appeal files of the Alberta Planning Board will then follow, along with an appraisal of the preliminary regional plans for the study area.

1.9 Sources of Information

Conflicts between the C.R.P.C. and the Board almost invariably concern measures embodied in a plan or the commission's interpretation of the Subdivison and Transfer Regulation. The conflicts lead to appeals where information is furnished by the commission and by the appellant. Thus, there are two pools of information readily available: the plans and the appeal files.

Within the time period examined, the Municipal District of Rocky View has had three plans. The first (a preliminary regional plan) was adopted in July of 1963 and remained in effect until 1971, when it was replaced by a new preliminary regional plan. In addition, a municipal district general plan was prepared and adopted in 1973. These two plans remained jointly in effect for the balance of the study period. The plans are important as they provide a detailed picture of the land use pressures affecting the study area and the policies developed by the C.R.P.C. to regulate land use.

The appeal files form a relatively larger body of information. The files studied cover the period from 1960 to 1978 and involve well over 200 hearings. They clearly indicate the contentious actions and the Board's willingness to endorse or reject them. The early files are rather thin and informal as compared with those of the 1970s. Even so there are basic similarities. The Board Order is the most important single element of each file. It is in the form of a brief outlining the subdivision proposal, its location, the reasons for the C.R.P.C.'s subdivision refusal or conditional approval, the appellant's argument in support of the appeal and, lastly, the Board's decision.

Changes have occurred in the Board Orders, not the least of which is the requirement since 1973 that reasons be furnished for Board decisions. More sophisticated appeal procedures have also meant greater numbers of supporting documents in the files. These normally include all the Board's correspondence about the

appeal, as well as maps, exhibits and reports. Supporting documentation is most often greater in highly contested appeals and this aids in understanding them. Correspondence between members of the Board is occasionally available as well, and it usually proves to give special insight into the final outcome of the appeal. Finally, some of the files contain relevant minutes from the municipal district council, revealing their feelings about specific land subdivision requests. Although they are not always present, they may influence the appeal decision.

2. THE DEVELOPMENT OF CENTRALIZED PLANNING AUTHORITY

2.1 Victorian Central Authority and the Limitation of Local Autonomy

The development of centralized planning authorities came rather late in the overall movement of industrializing nations to centralize a wide array of government powers. These planning authorities grew out of earlier central institutions in such fields as public health and housing, where they were created to alleviate some of the harmful effects of industrialization. By creating central authorities the three levels of government were made more interdependent and had to coordinate their activities. The job of coordination was usually given to a centrally placed special purpose agency, and the initiative for forming these agencies was most often taken by central or provincial governments (Rowat, 1975, ch.8). This frequently increased their supervision or administration of what had previously been municipal activities. "The chief functions of the special purpose agencies... were limited to the guidance and supervision of local administrative authorities. This, strictly speaking was no system of checks and balances where one level of government existed to restrain or limit the power of others. Rather, it is more accurate to say, central and local agencies were instituted to aid in the organization and reform of local authorities by providing those agencies with uniform procedures, information and advice" (Lubenow, 1971, p.181).

Keeping this comment in mind, "there is a range of activities which is the concern of the local government and a range which is not. These ranges vary from time to time, and most of the conflicts that surround the interaction of governments within Alberta are concerned with varying the powers of different levels and units of government" (Bettison, Kenward and Taylor, 1975, p.9)

Government institutions in Alberta and Canada, and the division of their powers, have been greatly influenced by English precedents. Our institutional and governmental traditions are, thus, not our own. An examination of why our governments or agencies interact as they do must partially concentrate upon English government and the reforms of the nineteenth century, since it was then that the modern pattern of public administration was founded.

In the first quarter of the nineteenth century the local government of England was maintained by some 15,500 parishes, 5000 crown appointed justices of the peace and 200 chartered boroughs (Lubenow, 1971, p.16). The parishes retained sole responsibility for poor relief, the maintenance of highways, and the policing of the countryside. The justices of the peace were responsible for the administration of justice, jails and asylums while the corporate municipalities administered criminal and civil law in their own jurisdiction and carried out municipal works such as lighting, draining and cleaning (Webb, 1951, ch.1). The men who took part in local politics frequently represented a propertied elite (Hill, 1974, p.25) and the justices of the peace and other local government officers were almost absolutely free from central control or authority. In short, the 'anarchy and autonomy' that characterized local authority precluded there being a 'system' of local government (Lubenow, 1971, p.17). This, however, was soon to change. Beginning with factory legislation in 1833 centrally directed bodies soon managed poor relief, public health, railways, the factory system, prisons, education, mining, and emigration (Lubenow, 1971, p.17). "The flow of people from the reasonably healthy countryside to the poisonous slum conditions of the new jerry-built towns [forced] the state to concern itself with the welfare of the people" (Gladden, 1961, p.15). And even though the sanctity of private rights and individualism was a keynote of nineteenth century thought, it was evident early in the century that there were powerful forces mitigating for the intervention of centralized authorities in the affairs of individuals and local government alike (Griffith and Street, 1959, ch.1).

Throughout the expansion of English government its "growth was characterized by a certain indefiniteness . Instead of a programme for administrative reform designed to produce a collectivist utopia, state intervention consisted of a series of legislative actions which produced modifications in the existing administrative structure. In addition, incrementalist growth was characterized by a probing quality. As new administrative and political experience produced new information about desirable objectives, the very goals of public policy shifted" (Griffith and Street, 1959, p.27). But although the goals shifted the basic method of attaining them did not. Power remained diffused, residing with many political authorities. Local authorities did not see their range of powers eroded, but they were made more accountable through a system of central inspection and their autonomy

was limited in this way. It was this feature rather than centralized direction that characterized the Victorian administrative state. It is also this feature of our own administrative process that generates considerable conflict between local and central bodies.

2.2 A Growth of Humanitarian Ideas

Canadian administrative practices and the laws that control them are essentially outgrowths of the social, economic and political changes experienced by Great Britain in the nineteenth century. Prior to that time the functions of government were sufficiently narrow in theory and practice that they had little daily impact upon the average citizen. "The central government was chiefly of importance in matters international: it was responsible for defence and regulated imports and exports. Any effect it had on the common people was either indirect or by a control exerted through the criminal law in matters of the peace. That public welfare and public order might stand roughly in relation of cause and effect was an idea foreign to the legislators of that date"(Willis, 1933, p.11). As early as 1820, however, rapid industrialization was causing this viewpoint to change (Cherry, 1974, p.6). It altered the centuries-old social, economic, and political fabric of the nation. In a period of scarcely two generations, Britain was transformed from a nation of rural-dwelling farmers into a nation of factory workers crowded into straining cities.

"With the industrial revolution and the consequent specialization of function – not to speak of the loss of local feeling occasioned by the flock to the towns – when dislocation at the Port of London might result in untold misery in Staffordshire, there grew up wider loyalties. Simultaneously the pressure of events began to force the central government to take an interest in local affairs; by the Reform Act [1832] the landed gentry lost their control over seats in the Commons, and in retaliation began to inquire into factory conditions. They then gradually extended the principle of control over the morals and living conditions of the apprentice, – in order to safeguard the health and safety of workmen against the niggardly spirit of the owners themselves. The smashing up of the new agricultural machinery by the starved and apprehensive labourers of 1830 led gentry and manufacturers to join in defence of what were mutual interests, and to put to an end the old system of the Poor Law. With the gradual extension of the franchise, it became the

practice for parties to vie with each other in promising reforms, and so from 1870 onwards a new note creeps into legislation" (Willis, 1933, p.12).

This new note was represented by the incremental expansion of central authorities. "The very success of laissez-faire was its undoing... Problems of housing, disease, and smoke could not be ignored. The administration had to intervene in the interests of public safety and health, an interference necessarily inconsistent with an unlimited freedom of property and of the person. The latter portion of the century witnessed a growth in humanitarian ideas: if children were not to work long hours and factories were to be safe and sanitary, freedom of contract could not remain inviolate. A new and irresistible urge for social security [had] been born: freedom from want [had] become more important than freedom of property" (Griffith and Street, 1959, p.1).

2.3 The Growth of Centralized Authority: The Forebears of Planning

Town and country planning as it is practiced in England and Canada is a creature of the twentieth century (Heap, 1973, p.4), yet it did not rise full and mature in a spontaneous manner. Its administrative and technical antecedents date from the nineteenth century. The various pieces of public health and housing legislation are of particular interest since they represent, in form and substance, the initial and enduring concerns of planning.

Dangers to public health were manifold in the early industrial cities. Extreme overcrowding had combined with insufficient sanitary provisions and high levels of industrial pollution to create circumstances favourable for the spread of disease. Epidemics of waterborne diseases such as cholera spread infection widely, regardless of class or social condition. The middle and upper classes soon realized that contagious diseases, unlike the slums they grew in, could not be easily contained (Tarn, 1969).

Initial steps to improve sanitary conditions were taken in many cities in the eighteenth century (Clarke, 1955, ch.12), but the Liverpool Sanitary Act, 1846, was the first genuine piece of sanitary reform legislation. This and other subsequent measures indicated the great number of elements contributing to the problem (Benevolo, 1967, p.89). In order to improve the sanitary conditions of cities a great variety of measures had to been taken. The need for sanitary improvement was, of course, greatest in those areas least able to afford it. However, the risk to the collective health of all classes was so great

that expenditures for improvements were made.

The first sanitary and building controls were by means of private Acts of Parliament (Clarke, 1949, ch.1). This led to a lack of uniformity in the manner in which similar problems were handled. Such Acts also depended on local initiative, but many areas had few or no sanitary controls, even by mid-century. And even when there was appropriate legislation, it tended to be poorly enforced and often ignored.

This situation was altered slightly by the passage of the Public Health Act, 1848. This called for improvements in the sanitary condition of "towns and populous places" in England and Wales though there was also a hidden agenda to be served. "The introduction of public health as a service of local government was rendered possible by the desire to keep down the poor rate rather than by any strong conviction that public health directly affected the welfare of the general body of citizens. Edwin Chadwick... in 1838, submitted...his report showing the close relation between destitution and insanitary conditions. In 1839 the matter received parliamentary attention, and the Poor Law Commissioners were ordered to investigate sanitary conditions. Next a Royal Commission was appointed which in its report, issued in 1845, confirmed Chadwick's thesis and recommended that water supply, drainage, and the paving, repairing, and cleansing of streets should in each area be performed by only one authority, subject to some degree of central administrative control" (Clarke, 1955, p.111).

A three member central board was formed to oversee the implementation of the Act. This first General Board of Health enforced the provisions of the Act where requested to, or in areas where the death rate exceeded 23 persons per one thousand (for a period of seven years from the date of passage of the Act). Thus, the Act was still permissive to a degree, but it was notable for its scope. It made provision for the establishment of Local Boards of Health which could, in turn, appoint a health officer and subordinate staff. The local boards were also empowered to procure or draft plans for the construction of sewerage and drainage systems for their districts. In addition, the Act set regulations governing sanitary nuisances, slaughter houses, lodging houses, streets, public gardens, water supplies and burial procedures.

In its time the Public Health Act was a sweeping piece of social legislation. Implementation was slow but the General Board of Health persisted, throughout its ten

year existence, in its promotion of public health measures. At the Board's dissolution, nearly 200 local boards had been established and "the course of English sanitary legislation could not be changed" (Benevolo, 1967, p.99).

The 1848 Act was augmented and amended many times during its tenure. Then in 1875 it was repealed and replaced by a new Public Health Act, which was mandatory in England and Wales. Its provisions also went beyond those of its predecessor.

The General Board of Health had been allowed to lapse in 1858 and its functions were divided between the Home Office and the Privy Council. A branch in the former office, called the Local Government Department, was created to administer loans and local bylaws while the health functions were assigned to the Privy Council (Laski, Jennings and Robson, 1935, p.48). This division proved to be unsatisfactory, particularly as the need for greater central control over sanitary provisions became increasingly evident. "The field of local government was overgrown with an almost impenetrable underwood of conflicting jurisdictions, while the very existence of the laws, as well as the mode of administration depended on the whims of particular towns and districts" (Redlich and Hirst, 1970, p.155).

A Royal Commission Report issued in 1871 drew clear attention to the inability of local authorities to administer the Public Health Acts. This led to the creation of the Local Government Board which, in 1875, was given authority for central administration of the new Public Health Act and so came to be at the centre of local government affairs. It was by no means limited to sanitary concerns, but assumed responsibility for the poor law, public order and a measure of concern for public finance (Jackson, 1965, p.268).

Local authorities, too, were given greater law-making powers. They could make bylaws about the number of persons a lodging house could accomodate and about the separation of the lodgers by sex. Cleanliness, ventilation, the reporting and control of infectious disease all came within the local authority's scope of regulation and the central authority's scope of inspection.

At approximately the same time as the second generation of health legislation was being enforced, various pieces of housing legislation were attacking related environmental problems. Eventually, most of the statutes relating to housing were consolidated under the Housing of the Working Classes Act, 1890, and the Local Government Board became the central authority responsible for housing matters.

A major purpose of the Act was the addition of good housing of uniform standard to the national housing stock. This was to be accomplished through the improvement of existing dwellings and by new construction on slum-cleared land. The redevelopment proposals were called improvement schemes and included a right for local authorities to expropriate properties, demolish buildings, widen roads, etc. The local authority had first to apply to the Local Government Board for official sanction of their improvement scheme. In addition, any changes to a scheme required the Board's approval and disputes involving compensation were settled by board appointed (and dismissable) arbitrators. The local authorities were thus given relative freedom to draft improvement schemes, and to implement them once they had been inspected and approved by the Local Government Board

Although laudable, these legislative codes failed to secure provision for the control of development beyond a few relatively narrow criteria. This is not surprising in view of Tarn's contention that "few people regarded the town as a physical or social entity capable of being grasped in its entirety (Tarn, 1980). It was, after all, much easier to grapple with specific problems in particular circumstances.

Regardless of their respective shortcomings, both sets of statutes did improve the basic living conditions for Britons. Yet, a fundamental problem remained. There was no legislation to control incompatible land uses. It was, for instance, still possible to erect a factory in the midst of a housing estate (Heap, 1973, p.4). Legislation to address this problem was included in the Housing and Town Planning Act, 1909.

2.4 The Development of Distinct Planning Legislation

A belief implicit in the 1909 and subsequent statutes was that by planning urban land use and development in advance, the problems which the health and housing laws had attempted to alleviate might be reduced or avoided. The principal step to this end was the drafting of legislation allowing municipalities to adopt town planning schemes which could apply to any lands likely to undergo development. Thus, under the planning scheme approach, development in one area could be related to development in neighbouring areas, so that incompatible or conflicting land uses could be avoided.

Although such schemes were to be drafted by municipalities they were largely controlled by the Act and the Local Government Board. The contents of planning schemes were specified in schedules appended to the Act and the approval of the Local Government Board was necessary before the plans could take effect. The Board was also empowered to render administrative or quasi-judicial decisions on appeals raised by individual landowners who believed themselves to be adversely affected by a town planning scheme. Such contentious items as compensation, expropriation, and the inclusion or exclusion of certain lands were decided by the boards, not the courts.

Amendments to the planning legislation were frequent. The Act of 1919 gave the Local Government Board greater control by dropping the cumbersome requirement that all town planning schemes be placed before parliament. In 1925 the housing laws were separated from the Planning Act and in 1932 the scope of planning was widened to include both urban and rural areas. Amendments in the late 1930's and early 1940's similarly extended and clarified planning powers.

All English planning statutes were brought together in a single enormous Act in 1947. The Town and Country Planning Act was so comprehensive that a planning lawyer's contemporary reaction to it was that "perhaps worst of all, there is an acute difficulty of saying what the Act does not do" (Megarry, 1949, p. 1). In simple terms however, the statute provided the authority necessary for the control of development, the acquisition of development rights by the state and compulsory acquisition of land in particular circumstances (Megarry, 1949, p. 11).

The manner in which development was to be controlled was changed from the old 'planning scheme' system. It had been found that, in practice, the inflexible planning schemes became unworkable as development progressed and the needs of people changed (Clarke, 1968, p.8), hence the new Act introduced the 'development plan' concept. These flexible plans showed "the allocation of land for different uses such as housing, schools, industry and open space (parks, playing fields, etc.): and the approximate future position of such things as principal traffic roads, shown diagramatically, for which land needed to be reserved" (Clarke, 1968, p.9).

Counties and county boroughs were the 'local planning authorities' responsible for the preparation of development plans while smaller units of government (boroughs, urban

district councils and rural district councils) had their planning powers removed (Megarry, 1949, p.5). The local planning authorities ruled upon requests for permission to develop land but the plans they drafted were based on policies developed and policed by the Minister (in actuality a vast ministry). Appeals too went to the Minister, numerous tribunals and even to the courts in some instances. Thus, local autonomy was limited much as before.

A new central authority was given significant power to implement provisions of the Act. The Central Land Board was not characteristic of previous boards in that it dealt very little with policy formation. It was chiefly concerned with the financial aspects of the Act. The Central Land Board was the instrument of state acquisition of development rights and the authority responsible for compulsory land purchases and it set development charges on land. The charges represented a payment to the community in exchange for permission to develop land in the community. The amount of the charge effectively cancelled any potential gains through speculation. No development could commence without the setting of a development charge and in the event of development without approval the Board could impose penalties.

The nationalization of development rights in conjunction with development charges resulted, in potential losses of money to landowners. To compensate them, a fund of L 300,000,000 was created and administered by the Central Land Board. It was expected that the Board would purchase development rights to all lands in the nation. Similarly, the Board could also purchase land compulsorily for development of general benefit to the community.

The new Act left local authorities with about the same level of autonomy as they had under previous Acts with regard to the preparation of plans, except that there were many fewer authorities empowered to prepare plans. The Act did represent a significant erosion of individual and local autonomy. In effect the individual and his local government representatives had less control of planning and development; both activities had been assumed to a considerable extent by the state. This was a logical progression in the legislative process begun in 1909. Like that Act, the new Act recognized the need to make development benefit the local community. The new Act, however, widened the scope of that responsibility; development was to be of benefit to the national community as a whole.

On balance British central planning authorities displayed certain common characteristics. They were delegated responsibility and power by Parliament for the implementation of specific pieces of legislation and tended to exist at arm's length from the political process. The boards were staffed, for the most part, by disinterested civil servants, while ministers of the Crown assumed political responsibility for the board's activities, the most important of which were the drafting of policy and the delegation of power to local agencies charged with implementation. Since policy implementation was essentially a local undertaking, the inspection of local authorities was important to the central agencies and became one of their principal tasks. Central policy direction and inspection limited local autonomy but created a situation designed to ensure that public policieswere applied in a manner prescribed in the relevant legislation. Local implementing agencies had few, if any, powers to interpret or vary regulations and requests for variances had to be addressed directly to the central body. Legislation to secure the public good was often in conflict with the doctrine of private rights so beloved by the common law and disputes with statutory legislation tended to be heard by central bodies and not the courts. As McAuslan has noted, the central bodies were faced with the task of mediating between two essentially opposed ideologies. The ideology of private rights in property and action had its foundation in the common law but the ideology of public good was firmly rooted in the ideal of popular government. Thus, to some extent the activities of central bodies (which were created and backed by government) were at odds with the accepted legal order. Government, through the implementation of new statutes was extinguishing old rights and presenting new duties. Conflict in which government could not directly intervene was inevitable. Similarly, the courts could not be relied upon to advance the public will hence, most British central authorities featured tribunals which existed exclusively for the mediation of disputes and from which there was only a limited recourse to the regular courts of law. Thus, central direction of policy, the inspection of local policy implementation and centralized variance granting powers formed the basis for British central authority.

2.5 The Development of Centralized Planning Authority in Canada

Their early experience with the development and implementation of statute law made English codes of legislation and their administrations the models to which some other countries looked. The first planning legislation in parts of Canada, for instance, was remarkably similar to British planning law of the day, and the way in which Canadian legislation was eventually implemented was based on the British approach, particularly where the need for central direction and inspection of local authorities was concerned.

The need for central direction had been apparent in many pieces of English reform legislation and initial Canadian planning laws allowing the drafting of town planning schemes included the coordinating influence of a central body (usually a Minister). Ministerial approval was required to ratify planning schemes or to modify them. In Canada, however, local authorities were not compelled to undertake town planning schemes. They were seen as discretionary local undertakings in which the role of the central authority was one of lending assistance. For that reason much early town planning legislation in Canada was ignored.

Proponents of town planning legislation in this country called for strengthened central planning authorities to overcome local planning inactivity. To that end recommendations were made that provinces have a "department of municipal and community service which would prepare for enactment by the province legislation to govern each kind of municipal activity and community service and administer them under the provincial executive" (Journal of the Town Planning Institute, 1922). Central authority or direction at the provincial level was then seen as the only practicable method of placing planning on a firm foundation. The nature of the central bodies to administer planning was discussed and viewed in the light of existing British institutions. For example:

> "Such an organization should be adequately staffed or it cannot spread its influence over the whole province as a living force. The town planning sterility of the Maritime provinces shows very clearly that the mere passing of a provincial town planning act is almost no use unless an executive is appointed to make the act intelligible and operative among the municipalities. Too much hard thinking, technical and social knowledge and social enthusiasm are

> needed to make a town planning act self-operative, or to make its operation dependent upon the town planning sense of the average crowded city council, obsessed with routine duties and the endless conflict of personalities due to election controversy...in Great Britain the central legislature... practically said to the local authorities: 'Town planning is a matter of national health and welfare and we expect local authorities to accept the obligation of planning as they do sanitary law'" (Journal of the Town Planning Institute, 1931.)

The lack of administrative sophistication at the local level was also considered to preclude local government from administering some statutes. The Province of Ontario was conscious of this when it required the newly created Bureau of Municipal Affairs to "enquire into, consider and report upon the operation of laws in force in other provinces of the Dominion and in Great Britain and in any foreign country having for their object the more efficient government and administration of the affairs of municipal corporations..."(Statutes of Ontario, 1917, C.14, s.11,(c)). Local government, at the time, was also considered to lack the technical competence to administer planning legislation, a point that favoured the establishment of central advisory services to supervise planning.

> "Theoretically the exercise of such supervision is the duty of the local authority, but practically it cannot be carried out, since technical knowledge is necessary to the proper interpretation of plans, and the average local authority is far from being in a position to retain such advice. Moreover, this work can be carried on more efficiently by a central organization; and when we reach the stage of comprehensive regional planning...then a central coordinating authority must exist"(Journal of the Town Planning Institute, 1927).

The net result of these perceptions was the formation of or the increase of authority delegated to provincial departments and their boards, commissions and other institutions. The concern for technical competence, however, was not limited to the local governments. The regular courts of law were also seen as being unable to handle quickly appeals resulting from the implementation of technical legislation, such as planning schemes (Robson, 1951, p.552). For this reason, the adjudication of planning disputes

became an 'in-house' administrative matter in most cases. The ability to decide appeals vested considerable power in the administration. In Canada, the Ontario Municipal Board is the first example of such an administrative institution whose powers allowed it to be an advisor on planning matters to municipalities and a quasi-judicial court of appeal for planning grievances.

2.6 The Regulation of Land Use by a Canadian Central Authority

The Ontario Municipal Board was not initially created as a planning board. Its inception on June 1, 1906, was some eleven years before the passage of the province's first planning legislation. Originally named the Ontario Railway and Municipal Board, it was created as an appeal body to police the Ontario Railway Act, 1906 and the Consolidated Municipal Act, 1903.

Under the Railway Act the board's responsibilities included the setting of standards for passenger and employee safety, and for the provision of fire safety screens (sect. 19), as well as the arbitration of disputes between the railways and their workers (sect. 58). The Consolidated Municipal Act conferred all powers previously held by the provincial cabinet onto the Board, thereby placing numerous, potentially contentious issues at arm's length from elected officials. These included annexations, municipal boundary adjustments, certain matters of municipal finance, and the authority to approve and confirm municipal bylaws relating to roads, bridges, public utilities, and so on (sect. 53). Neither of these Acts had sufficient impact upon the other to require a board to manage conflicts between them. Rather the reason for the Board's involvement with each Act was that they required quasi-judicial decisions.

With the passage of Ontario's first planning legislation in 1917, the Board's scope of municipal involvement was widened and its authority to hear appeals and render decisions extended. Indeed, since 1917 the Board's scope had been broadened to deal with most facets of municipal government where quasi-judicial decisions are needed (Adler, 1971, p.6). Its decisions reinforce its supervisory role over the regulations, which at a most basic level, determine how an individual may use land in a given area. At a more general level, the Board considers the roles of municipal governments as political and social forces in their regions and as policy-makers acting for the best interests of their

citizens. It also has to ensure that regulatory authorities use their powers with regard to democratic responsibilties (Adler, 1971, p.4).

The Board has jurisdiction over three major classes of decisions: zoning bylaws and bylaw amendments; land subdivision appeals; and municipal annexation requests. Zoning bylaws require Board approval before they have effect. This allows the Board to examine them to ensure that they offer a sufficient variety and quantity of land to accommodate future growth. The process protects the citizens of an area from the extremes of over-restrictive or over-lenient zoning controls. Amendments to zoning bylaws similarly must be approved to take effect and are evaluated on the same grounds. According to Adler (p.69), the Board's duties in this area accomplish "at least three desirable objectives: it is more likely to ensure the protection of the environment..; it creates an atmosphere of confidence and stability in the local process, thereby avoiding hardships of reliance on inconsistent standards; it places the burden of proof on those who wish to change the existing order rather than on those who wish to maintain the status quo."

In a similar manner, in subdivision appeals, the burden of proof is placed upon those individuals who want to subdivide land. To be approved a subdivision must meet numerous criteria set by the Board. The process also allows opponents of a subdivision to air their grievances which are taken into account in the final decision. This tends to preserve community development standards, and confidence in them, and restricts the amount of land subdivided.

The O.M.B.'s role in the zoning and subdivision approval processes renders it partially responsible for the distribution of land resources in Ontario municipalities. In some of these communities, land or specific types of land are in short supply, which means that the municipality is faced with the interrelated problems of increasing densities, undertaking redevelopment or annexing additional territory. Annexation, says Adler (p.142) possesses three principal advantages. "First, the municipality can satisfy its needs for additional land. Second, an annexing municipality may be better able to provide more adequate services to adjacent developed areas where the local authority possessing territorial jurisdiction is presently unwilling or unable financially to do so. Third, annexation provides an opportunity for a municipality to exercise some degree of control over areas outside its boundaries

which might otherwise have injurious impact upon it".

It is in deciding upon annexation appeals that the role of the O.M.B. is best put into perspective. It must rule on the merit of the proposal taking into account the assets and liabilities. The decision cannot be biased in favour of any single party but must represent the greatest possible benefit to the public. It must be beneficial to the citizens of the affected areas and of the province as a whole.

The latter point underscores the need for centralized planning authorities. Decisions regarding zoning, land subdivision, annexation or other planning matters rarely affect just a few persons. Such decisions affect wider populations and should be undertaken or coordinated by bodies privy to greater sources of knowledge and a broader viewpoint.

2.7 The Rationale for the Use of Administrative Tribunals

The decisions of administrative bodies are backed by law. However, the laws governing an administration are fundamentally different from constitutional laws. The latter emphasize the rights of the individual while the former lay equal emphasis on the duties owed to society by individuals (Robson, 1951, p.549). The balance between individual right and social duty is a function of government and governments at all levels have, typically, expended much effort to advance the general interests of society. Such social advances only progress through adjustments and changes in the existing order of things and the gradual advance of social duty "modifies or extinguishes old rights and duties, and creates new rights, duties, and responsibilities all of which affect and change the relationship both socially and legally between one individual and another, and between individuals and authority. Inevitably, it seems, the public interest advances at the expense of the individual, and at each new advance a new balance must be struck between private rights and public advantage"(Alberta, Special Committee on Boards and Tribunals, 1965, p.2).

The 'inevitable' conflicts with private rights are most often handled in administrative courts or tribunals. The reasons why such disputes are put before tribunals and not the regular courts are numerous but foremost is the notion that administrative tribunals are freely able to evolve new standards of justice as they are unhampered by a need to rely upon strict legal precedent and are similarly detached from the traditional legal standards

attached to the doctrine of private rights. Further, it is felt by some legal practitioners that the legal profession and the courts are too rule-oriented to offer the flexibility required to administer public policy (Robson, 1951, ch.8). "Even where standards have been evolved by the courts, they have sometimes shown a tendency to crystallize into rules; sometimes as inflexible as the most rigid rules of the common law" (Robson, 1951, p.554). Robson further maintains that many administrative statutes are not well suited for adjudication in the regular courts: "The ordinary courts of law are more suitable for determining a dispute where each party claims something definite, than for deciding those in which a standard of service or attainment has to be determined and enforced in the public interest... The significant fact is that the powers of adjudication are to be exercised, not with the object of enforcing individual rights, but with the purpose of furthering a policy of social improvement"(Robson, 1951, p.557).

The speed with which conflicts between private right and public duty are resolved is important to the furtherance of social policies. For instance, it is rather doubtful if the sanitary reforms undertaken in nineteenth century Britain could have been realized so quickly if each conflict involving the Public Health Act and an individual had been left to the "costly and leisurely adjudication of the courts of law" (Robson, 1951, p.552). In contrast, the speedy and inexpensive nature of tribunals made them attractive alternatives, particularly from a governmental point of view.

Yet, speed and cheapness are achieved at the expense of the technical thoroughness usually associated with the courts of law. The desire for efficiency affects the way in which tribunals are staffed and how they conduct their proceedings. The staffing of tribunals is commonly the responsibility of the cabinet of the government in the name of the Crown. Cabinet's choice of members allows it to tailor, to some extent, the liberalism or conservatism of the tribunal with respect to public policy and to determine the type and nature of qualifications necessary for service of the tribunal. In the particular case of the Alberta Planning Board, not only are the appointees not elected, they are drawn from various government departments concerned with land use control and development. Though this is a slightly unusual situation, the A.P.B. adheres to the regional practice of not appointing political figures. The potential risks of 'friendly' appointments has resulted in many Acts precluding a Minister of the Crown from sitting on a tribunal. Such caution has

served to protect tribunals from overt political influences but has also isolated government from the political consequences of tribunal activities.

Many boards and tribunals are able to establish their own rules of practice and regulate their own proceedings. Thus, some have virtual 'arms length autonomy', which means that they are not required to adopt practices or standards as high as those of the regular courts. Indeed, in the name of efficiency many tribunals have chosen to work without adhering to the legal rules of evidence, thereby working outside the rule of law. "What is meant here by the 'Rule of Law' is the supremacy or the predominance of law, as distinguished from mere arbitrariness, or from some other mode, which is not law, of determining or disposing of the rights of individuals" (Lord Hewart, 1929, p.23). By not relying on the legal rules of evidence a tribunal does not require the service of lawyers. Facts do not have to be proven in an oral hearing, with the result that the proceedings may progress more quickly and without the expense of legal specialists. Many tribunals have, however, exchanged legal expertise with expertise drawn from specific fields with which the tribunal is concerned. The use of technically trained people reduces the time necessary to come to a decision, whereas, if lawyers were involved, considerable time would be spent educating them regarding technicalities outside their discipline. This point raises a fundamental question as to whether the specialist technical tribunal members have been educated in the finer points of the law, an area outside their range of expertise. Can people not legally trained, without ascertaining fact, potentially using information gained without an appellant's knowledge be said to dispense justice in any traditional sense?

The early use of tribunals in some legislative jurisdictions suggests they were used less for their ability to dispense justice , or to set new standards and promote public policy, than as a kind of legal hedge to protect public statutes from being discredited in the courts of law. American zoning, for instance, was a police power greatly limited by the actions of courts which branded entire statutes 'arbitrary' on the basis of a single circumstance. "Zoning like other police power regulations must not transgress the rights of property owners guaranteed to them by the 'due process of law' provisions of state constitutions. If the zoning regulations do so transgress, they will be declared void by the courts" (Bassett, 1925, p.424). However, "a thousand and one instances of arbitrariness may arise in the administration of any zoning ordinance however, carefully prepared, and if

there is no method of adjusting those instances there will be a succession of adverse court decisions against the ordinance, and after these court decisions have accumulated for a few years the zoning ordinance will be rather near the scrap heap" (Bassett, 1925, p.427).

Adjudicatory tribunals were to provide variances from statutes as specific instances required. The presumption was that the tribunals would be expertly staffed and deal only with cases of 'practical difficulty or unnecessary hardship'. They were to exercise expert technical judgement to ensure that private rights were not usurped unfairly or unnecessarily and in this way they provided a kind of forum for resolving grievances that was away from the potentially dangerous regular courts of law. As tribunals commonly set their own rules of conduct, however, it was the responsibility of the tribunal to decide what matters were rightfully before it. That power has been, in some cases, so little respected that virtually any matter made contentious through the exercise of some public statute was subject to adjudication, a situation that can transpose the implementation of public policy from its designated instruments into the hands of tribunals. Such a shift of activity can isolate local policies from local control and can make them impossible or much more difficult to implement if they are overruled.

In many respects the Ontario Municipal Board was established to bring to that province the qualities of central policy direction and formulation furnished by boards in Britain. A major difference between the O.M.B. and the British boards, however, is that the O.M.B. became a specialized central agency dealing primarily with problems that required quasi-judicial decisions. The O.M.B.'s role as an inspectorate was for all intents handled through its appeal hearing process and was, therefore, less formal that that common to British boards.

3. THE DEVELOPMENT OF A CENTRALIZED PLANNING AUTHORITY IN ALBERTA

3.1 Introduction

As a central institution the Alberta Planning Board is a comparatively recent development. However, the niche now filled by this board has, under past planning acts, been occupied by three predecessors. Its functions, as specified by the various planning acts, have also changed, but from its inception in 1928 its scope has been province-wide. Its object has been to promote planning in Alberta and to obtain planning measures consistent with provincial planning goals. The means by which the successive boards have fulfilled this mandate is the subject of this historical review.

3.2 The Town and Rural Planning Advisory Board

The Planning Acts of 1913 and 1922 had followed the British Town Planning Act, 1909, by providing local authorities with a legislated framework for the drafting, funding and execution of locally initiated planning schemes. Under the early Acts local authorities had considerable autonomy. The decision to undertake a planning scheme was, in most instances, a local one. The Act did state general provisions to which planning schemes were to address themselves, but allowance was made for the adaptation of the general provisions to the local situation. The administration of schemes was also a local responsibility, though the Minister of Municipal Affairs had final powers of plan approval and variance. The fact that all central authority was vested in the Minister was one of the few departures from the British model; and the explanation, of course, is that in Alberta in 1913 there was no equivalent to the Local Government Board.

The emphasis on local responsibility meant that little formal planning could be undertaken beyond the boundaries of towns and cities. The government had little control over development in the greater part of the province's settled areas. In an effort to alter this situation, rural planning, or at least an extension of provincial planning regulations to rural areas, was provided for in the 1928 Act to Facilitate Town Planning and the Preservation of Natural Beauty. The Act was partly a response to the demands of the United Farm Women of Alberta, who wished to see controls instituted over development,

particularly billboards and signs along highways (Dept. of Municipal Affairs, 1978), and partly a reflection of Premier Brownlee's own desire to beautify the countryside.

The 1928 Act was an adjunct to the Town Planning Act, 1922, then still in effect. The new legislation was conceived to give the Province a degree of control over development along highways and in areas of natural beauty, where provincial parks might be established. The Act also provided an institutional tool for the realization of its aims: the Town and Rural Planning Advisory Board. The Board had its nine members appointed by the Lieutenant Governor in Council. Its duties and powers were specified in the Act and it is important to note that they did not infringe upon the autonomy of local authorities. In general, the Board's duties were:

> a) "to cooperate with any local authority in formulating and carrying into effect of any town planning scheme;
>
> b) to confer with and advise the Minister at his request as to any regulations made or hereafter to be made respecting plans of subdivision pursuant to the Public Works Department Act and any matter incidental thereto;
>
> c) to assist and advise any rural authority in devising ways and means of preserving the natural beauty of the locality and of ensuring that new buildings and erections therein shall be so designed and located that the same shall not mar the amenities of the locality;
>
> d) to promote in any community a pride in the amenities of its neighbourhood;
>
> e) to collect and collate information as to town planning schemes" (Statutes of Alberta, 1928, ch.48, s.4)

Thus, "the 1928 Planning Advisory Board was essentially advisory to the minister, and in respect of regulations it advised and conferred with him only at his request (sect. 4(b)). In 1928 the Planning Advisory Board was not envisaged as an executive instrument, but rather as a technical service to the administration, though its membership had no statutory guarantee of technical competence" (Bettison, Kenward and Taylor, 1975, p.49). Yet, with the approval of the Lieutenant Governor in Council, the board was empowered to

make "regulations with respect to any land which is not included in any city, town or village, and which is contiguous with any main highway

> a) declaring any highway or part of a highway to be a highway to which this Act applies, and establishing a building line on each side thereof;
>
> b) as to the design, location and construction of any building located on any highway...not being within a city, town or village, which is or is intended to be used for the purpose of supplying travellers with refreshment;
>
> c) as to the site of any tourist camp and the laying out and equipment thereof;
>
> d) prohibiting or regulating the erection of signs and signboards and the pasting or painting of notices and the exposing of any advertising device upon or within one-quarter mile from any public highway outside the corporate limits of any city, town or village;
>
> e) for licensing and fixing the fees for licenses to be granted to any person for erecting any sign or notice or exposing any such advertising device on any public highway or within one-quarter mile thereof;
>
> f) as to the care, maintenance, management and control of any land acquired for park or other purposes pursuant to this Act" (s.5).

In addition, the Board (with the approval of the Lieutenant Governor in Council) was empowered to purchase lands of natural beauty or historic significance. To that end the Board had the option of purchase and even, in some circumstances, to expropriate land. This aspect of the Board's activity was limited by a ceiling of twenty-five thousand dollars per annum.

In the following year the Town Planning Act of 1922 was repealed and replaced by an Act to Consolidate and Amend the Statutes relating to Town Planning and the Preservation of Natural Beauty. As the title would imply, the new Act integrated the Board's role within the overall planning aims of the province, and expanded them slightly. Previously, the Board had "to confer with and advise the Minister of Public Works as to

any regulations...made respecting plans of subdivision" (s. 4(b)). The new Act strengthened the Board's consultative role by requiring it to advise the Minister as to the " desirability of approving such plans of subdivision or otherwise...' (s. 3(c)). With this, the Board was expected to examine specific plans of subdivision and to exercise its judgement upon them. The Board's powers to make regulations under the newAct remained as they were in 1928. Nonetheless, there was an increase in the extent of its power, in the sense that its mandate was expanded to include all land in the Province outside the boundaries of cities, towns and villages. In addition to its ability to make regulations, it was also largely responsible for the policing of its regulations (The Alberta Gazette, 1929, pp. 611-13). Even so it was hardly a threat to local autonomy. "The Act clearly separated the board and the director's terms of reference from the planning instruments designed to apply to the urban centres. Urban planning instruments- which included local authorities, town planning commissions, an official town plan, official schemes, zoning by-laws and zoning districts, appeals, and compensation procedures- were scrupulously arranged to refer not to the Board, but to the Minister direct. The Board's powers were limited to the adjudication of appeals which had gone first to local town or rural planning commissions; but in the general run of by-law regulation and control of planning the board was kept out of local matters" (Bettison, Kenward and Taylor, 1975, p.49).

Even so, the Board's presence was heightened in rural areas and on the fringes of cities, towns and villages by its required approval of sales, mortgages, certain leases, and agreements to lease of unsubdivided land. Approval was also required for sales, mortgages, leases or agreements to lease parcels of land containing less than eleven acres and being part of a larger parcel situated within two miles of a city, town or village (s. 43 (1)(2)). This section enabled the Board at least to monitor the sales or leases of small parcels of land. The intent was to prevent the fragmentation of land on the fringes of communities which had, to that time, made the provision of services to these areas costly and difficult (Dept. of Municipal Affairs, 1978). The possibility of a sale, lease, lease agreement or mortgage not being approved was not addressed in the Act nor were the criteria of approval stated or leave to appeal granted.

Similarly, no appeal criteria were stated under section 36, where the right of appeal was extended to "any person who considers himself aggrieved by the provisions of

a zoning by-law" (s. 36). The zoning power was introduced into Alberta in the 1929 Act, and its contentiousness made the right to appeal significant. The net effect was probably small but a non-parochial influence had been brought into an area of local concern. To some extent local autonomy was reduced by the prospect of uniform judgements with respect to zoning appeals throughout the province. It is important to note though, that in 1929 alone 5 cities and 9 towns appointed town planning commissions and others followed in later years. The appointment of the town planning commissions effectively limited the Board's involvement with local planning affairs since appeals could only be taken to the Board where a commission had not been established. In addition, it was unlikely that a community would draft a zoning by-law and not provide a town planning commission to administer it. Yet, the legislation provided that when the Board considered an appeal it was to adhere to the spirit of the zoning by-law. It could make regulations relating to special cases but in all circumstances it was to ensure that "...substantial justice was done and that all the interests of any individual were not unduly or unnecessarily sacrificed for the benefit of the community" (s. 36). The official view of planning was that it was to benefit the general community only insofar as it did not impinge 'unduly or unnecessarily' upon individual interests. This, of course, was in accord with the ethic of individualism on which the United Farmers government was founded, and with their belief in the power of voluntary cooperation to establish the collective interest (Macpherson, 1953, ch.2). The responsibility of the T.R.P.A.B. in zoning appeals made it, in effect, the arbiter of collective and individual interest in town planning matters.

The Town Planning Act was consolidated in 1942. No revision was involved, instead the various amendments that had been appended to the Act since 1929 were written into it. The Board remained as previously constituted, although it was given greater control over land contiguous with declared highways. Two amendments drafted in 1934 provided the Board with the authority to fine and or order the removal or any structure erected in contravention to the Act. While this amendment may have been intended to control signboards, it gave the Board the power necessary for a wider regulatory function.

The Board's supervision of subdivision regulations was also made more specific by its now having to approve subdivision requests within urban communities as well as without. A similar order of approval was made necessary before any plan containing

"...more than ten lots subdivided for the purpose of selling the same in allotments [could] be registered in the Land Titles Office" (s. 35(10)). The latter approval required "the owner or someone on his behalf [to] satisfy the Board that the land [was] expected to be required for building purposes within a reasonable period of time". This policy represented a shift in the burden of proof. It had become necessary for a land owner to justify a development in terms of the larger community's need for land. Subdivision without demonstrated demand but meeting legal requirements had ceased to be a right of land ownership.

3.3 The Provincial Planning Advisory Board

The Town Planning Act was extensively amended in 1950, though its basic provisions were relatively unchanged. The name of the T.R.P.A.B. was changed; it became the Provincial Planning Board in response to a programme to expand and emphasize regional (or district) planning. The amendments also provided for the creation of several other boards and commissions. In urban and rural areas a council could by bylaw create planning advisory commissions whose function was one of giving advice to the respective council on planning matters; it was the old town planning commission under a new name. Planning at a regional scale was made possible by the institution of district planning commissions (which had also been possible previously but never undertaken). The creation of such a commission could only be commenced after a resolution was received from the councils of two adjoining municipalities with a recommendation of the Provincial Planning Board. The Board was also to have representation on the commissions.

The powers of the commissions were to enable them to:

a) "act in an advisory capacity on any matters pertaining to planning which may be of common concern to any two or more of the represented municipalities or to any municipality or municipalities and the Province;

b) prepare and recommend to each council represented a general plan and a zoning by-law;

c) prepare and recommend to each council concerned any official scheme of development common to two or more of the represented municipalities or to any municipality or municipalities

and the Province;

d) appoint such planning engineers, consultants or other officers as may be necessary for any of its purposes and expend such funds as may be furnished by the represented municipalities and the Province for this or any other purposes;

e) promote public interest in district or regional planning;

f) exercise such rights and powers and perform such duties as may be vested in it by the Lieutenant Governor in Council or delegated to it by the councils represented, other than the power of raising money or expropriating land" (s. 11(c)).

The district planning commissions were to be to regional areas what the planning advisory commissions were to Alberta cities, towns and villages. The provision for their establishment and operation made regional planning a virtual certainty but it also widened the influence of the Provincial Planning Advisory Board. The Act provided leave of appeal from any decision made by a local authority under an interim development order (s. 12(a)). As the orders enabled municipalities to control development while plans were being drafted, the Board was potentially able to exert considerable influence upon land uses in a way that the plans would eventually have to respect. "The provincial board's powers, however, remained similar to those of 1929. The new Act did not give it such powers and funds as could lead directly to the preparation of a planning document likely to determine planning at a provincial level of a kind similar to that provided for under a general plan prepared by a municipality" (Bettison, Kenward and Taylor, 1975, p.97).

The next version of the Planning Act in 1953 effected little change in what had been accomplished in 1950, although it did alter the Board's composition. It had previously been composed of the Director of Town Planning and three or more members appointed by the Lieutenant Governor in Council. The new Act allowed "representatives of Departments of the Provincial Government concerned with any aspects of urban and rural development within the Province to be appointed by the Lieutenant Governor in Council" (s. 5(b)). This gave the government much better representation on the Board and made its decisions more relevant to the issues affecting the government. These issues were primarily concerned with the relatively unchecked urban expansion on the peripheries of

Calgary and Edmonton. Such developments were deplored by the cities involved for their potential uneconomic character, the implications of which would be felt by the provincial government as well as the urban municipalities. Such expansion underscored the need for effective direction and control of development of a kind which the District Planning Commissions had not been able to provide. It was clear "that having only an advisory role did not give the commissions much authority over land use decisions. In 1957, commissions containing a municipality in excess of 50,000 population (Edmonton and Calgary) were given the authority to prepare a district general plan governing land use for the entire district. Once such a district general plan was in place, no municipality could take actions inconsistent with the plan. Authoritative regional planning was thus in place"(Dept. of Municipal Affairs, 1978).

Or was it? As Bettison et al. point out, "the 1953 Planning Act clearly gave the local council the right to decide the outline of the future". They then go on to quote from the report of the McNally Royal Commission on the development of Edmonton and Calgary: "The enforcement of a general plan, whether inter- or intra-municipal, thus depends entirely on the willingness of the municipality or the Provincial Planning Board to enforce it. Since, the policy of the Board is not to overrule the municipality, in practice the control of the spread of subdivisions into rural areas depends entirely on the willingness of the municipality" (Bettison, Kenward and Taylor, 1975, p.131).

3.4 The Provincial Planning Board

The redrafted Planning Act of 1963 contained an amendment of 1957, by which the advisory designations of all the planning related boards and commissions were removed. The Act provided an administrative hierarchy unified by a statement of purpose, which was "to provide means whereby plans and related measures may be prepared and adopted to achieve orderly development of land within the Province without infringing on the rights of individuals except to the extent that is necessary for the greater public interest" (s. 3).

The Provincial Planning Board's powers were similar to those granted in 1953, although in retrospect it is clear that its power to regulate development of certain types or in certain areas was being phased out. As the planning administration had passed to

municipalities and regions, the Board's powers were similarly re-oriented, particularly with respect to the regional planning commissions. Insofar as the commissions were concerned, Board involvement extended into their establishment, funding and policy direction. Changes in policy direction were partly effected through the land subdivision process. The new Act had reduced the number of agencies able to approve subdivisions; these included the municipal planning commissions of Calgary and Edmonton and the regional planning commissions. By virtue of the volume of subdivision requests, the regional planning commissions had more frequent contact with the Board and received more guidance. The Board's particular interest with the regional planning commissions, it can be presumed, sprang from the belief that as appointed technical bodies, they were not directly responsible to the public as municipal councils were and had to be made accountable. A point to ponder, though, is that the non-elected Board was also not accountable to the public.

As part of this role the Board was to "conduct studies with respect to the physical, economic and social aspects of development and prepare reports and recommendations on metropolitan growth, the planning of new towns, and any other matters relating to the development of the Province that may require the attention of the Lieutenant Governor in Council" (s. 6(4)(a)). At the same time the regulations governing appeals were strengthened, because the Board was not bound by the technical rules of evidence in the conduct of its hearings and inquiries. Further, the subsequent appeal of a Board determination could only be made upon a question of law or jurisdiction and then only to the Supreme Court of Alberta (s. 146(1)).

Some of the appeals that the Board could hear were of an administrative nature. Thus, section 85 stated that "a council may appeal to the Board a decision of a [regional planning] commission:

> a) confirming a regional plan or adopting a preliminary regional plan or any part thereof, or
>
> b) refusing to adopt or confirm an amendment to a regional plan or a preliminary regional plan proposed by the council, or
>
> c) made under section 93 and referring to a dispute to which the council is a party"(this section refers to disputes involving two

councils)

An appeal process to aid the regional planning commissions in disputes with their member municipalities was also provided in section 86. "A commission may appeal to the Board where;

> a) a council has not passed a by-law required to implement a regional plan or a preliminary regional plan, or
> b) a development control by-law or a zoning by-law passed by a council does not properly implement a regional plan or a preliminary regional plan, or
> c) a public authority has taken an action or undertaken a public work contrary to, inconsistent with or at variance from a regional plan, or a preliminary regional plan, or
> d) a council fails to administer its zoning and other by-laws in a manner consistent with a regional plan or preliminary regional plan or administers its zoning and other by-laws in a manner that causes or will cause an inconsistency with or a variation from a regional plan or a preliminary regional plan" (s. 86).

Hence, there was considerable potential for commissions to rely upon the Board to resolve disputes within the commission itself. The balance of appeals heard by the Board concerned requests for relaxation of provisions of regional plans (or preliminary regional plans) or the provisions of the Subdivision and Transfer Regulation, and appeals from individuals whose applications for subdivision had been refused or only conditionally approved.

In the latter case, there was an automatic right of appeal, provided that the application conformed with land use regulations. The Board was, however, able to decide whether an appeal was rightfully before it. It also had great latitude in judging an appeal; it had to uphold the purpose of the Planning Act - orderly and economic development while ensuring the rights of the individual were not being sacrificed to achieve this collective end. Conflicts of many kinds hinged upon this point, and it is not surprising that the Board's determinations should have come under periodic criticism since it alone determined the balance between specific rights in property as opposed to the costs to the advancement

of the public good. Perhaps most notably, for the present purpose, the McNally Commission was concerned that the Board could not be an effective agent for regional planning policies. "The Provincial Planning...Board, in its regulatory and approval functions, does not in practice offer a method by which a district general plan for an area may be put into effect. In its administration of Subdivision Regulations... it is concerned for the most part with the internal aspects of subdivision, and not with the general location, or its conformity with a general district plan, and even some of its subdivision rules may be waived at the Board's discretion. In its appeal function, the policy of the Board is to pass upon existing municipal by-laws, not upon their conformity to a distinct plan" (Bettison, Kenward and Taylor, 1975, p.191).

Although the Planning Act was revised in 1970 there was little change in its structure, policies or wording. The changes were confined to administrative details. In the Board's case, the most significant ones concerned its ability to rehear any matter that came before it (s. 6(2)(a)), and to review, rescind, vary, alter or change its orders if no development had commenced as a result of the original Board order (s. 6(3)(a)). The orders were also given a one year period of effect after which they became void. Setting a time limit on the Board orders had a variety of effects. It acted as a disincentive to developers not intent or financially prepared to act upon the order. It also helped to prevent the orders from becoming outmoded with respect to changing regional plan policies. The net effect was that, with some regularity, the Board was called upon to give time extensions and, in so doing, to re-evaluate its decisions.

The 1970 Act also introduced the notion that the Board in hearing an appeal was accountable to local plans. "The Board...shall consider each appeal having due regard to the purpose, scope and intent of a regional plan, a preliminary regional plan, a general plan and to the development and use of the land that may result from the proposed subdivision" (s. 20(3)(b)). The key word, however, was 'consider'; the board was still not bound to adhere to any existing plans. The Board as well as all other planning agencies, however, under section 16(b) could not allow any land to be subdivided if the subdivision was contrary to any local plan or land use bylaw and this point was the cause of considerable concern later.

3.5 The Alberta Planning Board

By the late 1960s the passage of new amendments to the Planning Act was an annual event (Dept. of Municipal Affairs, 1978). This was due in part to the pace of development in the province and the attendant pressures on land. The increasing sophistication of developers' proposals also exposed the shortcomings of the Act and in an effort to get a planning statute sufficiently sophisticated to deal with new demands, research and development on a new Act were commenced shortly after the 1970 Act was given assent.

The new Act was given assent in 1978, after five years of study and public debate (Elder, 1979). Changes in the Act were incremental rather than sweeping. Its purpose was revised; it was now to "achieve the orderly, economical and beneficial development and use of land and patterns of human settlement, and maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta" (s. 2(a)(b)). But as in the past, this general objective was qualified by the provision that there should be no infringement "on the rights of individuals except to the extent that it is necessary for the greater public interest." The Alberta Planning Board, once again, was cast as one of the chief agents for determining where individual rights end and collective rights begin.

The Alberta Planning Board's duties and functions, under the new Act, were such as the Lieutenant Governor in Council saw fit to confer or impose. These, it seems, mainly concerned the leave to appeal and the actual process of appeals, although one purely adminstrative function was given to the Board. The Act established the Alberta Planning Fund which, although under the jurisdiction of the Minister of Municipal Affairs, required the Board to assume responsibility for its regular administration, both in the assessment of annual contributions – " The Board shall notify each council by May 1 of each year...of the amount the council is required to pay into the Alberta Planning Fund" (s. 11(1)), – and in the distribution of grants: "There shall be paid from the Alberta Planning Fund such sums as may be authorized by the Board and to such persons as may be specified by it for any or all of the following purposes:

> a) the operation and administration of a regional planning commission;

b)enabling any plan referred to in this Act to be prepared;

c) enabling any special planning studies to be carried out" (s. 12(a)(b)(c)).

Regional planning commissions were still nominally accountable to the Board, but it was no longer able to ratify regional plans. Instead, the Board assumed a more formal role in the plan preparation process. The Act stated that "a regional planning commission shall during preparation of a regional plan, provide an opportunity to the Board and the councils of those municipalities situated in the planning region and those local authorities and persons affected by it of making suggestions and representations with respect to the plan" (s. 57(1)). In addition, the Board was to review regional plans before they were sent to the Minister for ratification.

The Board remained the appellate agency for subdivisions, its powers undiminished from previous Acts. It was still able to police its decisions and could make its own rules of procedure. Beyond this, the general regulations concerning appeals became much more judicial in nature. "For the purposes of [the] Act and the [Subdivision and Transfer] regulation, the Board may;

a) summon and enforce the attendance of witnesses in the same manner as a court of record in civil cases;

b) require a person to attend and produce such plans, documents, or other things as it considers necessary for the purpose of the inquiry, hearing, appeal or other matter coming within its jurisdiction;

2) Any member of the Board may administer an oath to a person appearing before it" (s. 18). Section 19 continued in a similar legalistic vein:

"Where in the opinion of the board the attendance of a person is required, or the attendance of a person to produce a document or other thing is necessary, the Board may cause to be served on the person a notice to attend or a notice to attend and produce, as the case may be, signed by the chairman of the Board. Where a person fails or refuses to comply to a notice to attend or to a notice to

attend and produce a document or other thing, issued by the Board, a judge of the Supreme Court, on application of the Board, may issue a bench warrant requiring the attendance of the person."

As of January 1980, neither of these powers had been used. On the contrary, writes Middlemiss (1980), " the Board does not encourage any procedure that would detract from its present style of conduct, one that would leave those parties to the appeal not represented by counsel at an apparent disadvantage." Thus while the potential for more court-like hearings is provided by statute, there is still a desire to avoid them if possible and to retain the accessibility necessary for individuals aggrieved by the planning process to be heard in less intimidating circumstances than a regular court of law.

In one form and another, the problem of providing accessibility to individuals whilst still having the effective powers of disclosure and appearance of the courts has left tribunals open for criticism. Criticisms directed against tribunals cannot easily be fended off. The notion of the use of tribunals arose in response to circumstances thought to be beyond the practical consideration of the regular courts of law. Tribunals combined qualities of easy access, informality, speed and cheapness; all of which assisted the extension of public authority. The tribunal was perceived to be the forum where public initiative could be weighed against private right without undue reliance upon legal precedents, themselves based on traditional doctrines of private rights. Private rights were defended all the more strongly because of this and resulted in a need for the tribunals to possess statutory powers of strong character. The general effect of these developments has been that tribunals are getting increasingly court-like. This leaves open for speculation whether greater formality will serve well the interests of the public or individuals, or whether tribunals will be so burdened with administrative procedures of severe character that the individual could be placed at a disadvantage.

This is an alarming prospect since tribunals, and the boards they are frequently appended to, have had a great deal of trust and power placed with them. Concerns too, are issued for the state of public policy as it is shaped and articulated to some extent, by boards and tribunals. In this respect the Alberta Planning Board is no exception. Its role has been widened fairly consistently as it has assumed greater authority This expansion of authority has also enhanced its power to determine where individual rights end and

collective rights begin. The balance between collective and individual rights is a dynamic one with the Board responding to public will through the Cabinet then directing this public will through its advice, assistance and review of regional planning efforts. It is with the tribunal, however, that the fine balance between collective right and individual right is determined. These determinations effect the realization of planning goals and objectives and the following chapters will deal with the nature of the tribunals defence or challenge of public land use policy at the regional level.

4. THE EARLY APPEAL FILES: 1960-1963

4.1 Rationale for the Groupings of Files Studied

More than two hundred subdivision appeals from the Municipal District of Rocky View were placed before the Alberta Planning Board in the period 1960 to 1978. The appeals concerned a variety of regulations and other control instruments, some of which were modified or amended by successive Planning Acts, Subdivision and Transfer Regulations and local plans. The major point of inquiry for the study is to examine whether these amendments and modifications were themselves an adaptation to the appeal activities of the Alberta Planning Board, or whether regional planning policy was modified in response to the Board's decisions. For this reason the appeals studied have been grouped into three time periods corresponding to the adoption of local planning measures. The first covers the period before the preliminary regional plan was approved in 1963, the second deals with appeals against actions taken during the tenure of the preliminary plan; and the last begins with the adoption of a second preliminary regional plan in 1972. Each step required a reassessment of regional planning policy.

In addition to subdivision appeals, the study will also deal with requests for the relaxation of the Subdivision and Transfer Regulations made to the Board. These 'waiver' requests constituted a large, although diminishing proportion of the Board's dealings with the Municipal District in the study period. The waiver requests have been grouped into the same chronological series as the subdivision appeals.

4.2 The Relaxation of Subdivision and Transfer Regulation

The first comprehensive land use plan for the Municipal District of Rocky View and the other municipalities in the C.R.P.C. plan area was adopted in July 1963, some six years after the Calgary District Planning Commission (C.D.P.C.) was empowered to draft plans and act as the subdivision approving authority for Rocky View and other member municipalities. Prior to that time th C.R.P.C. had no comprehensive land use plan. The available land use controls took the form of the Subdivision and Transfer Regulation. This was of particular importance as it formed the largest body of land use controls and

compliance with them was mandatory. Consequently the regulation was the focus of a large number of the appeals.

In its subdivision approval activities the C.D.P.C. was bound to adhere to the provincially authored Regulation. The Commission's ability to interpret it or to relax any of its provisions was limited by a requirement that the Planning Board should hold hearings regarding all relaxations recommended by the approving authorities (Alberta Regulation 185/60, s. 12). When certain of the requirements were thought to be excessive or unwarranted an approving authority could request that the case be heard by the Planning Board. Requests for waivers went before the Appeal and Waiver Committee of the Board and although not usually part of a subdivision appeal, the waivers illustrated the range of provincial regulations requiring extensive interpretation. The total number of waivers for this period was 43 which, although not large in real terms, accounted for over four-fifths of the appeals that came before the Board from Rocky View.

Requests for the waiving of particular requirements came frequently from the C.D.P.C. itself. These waivers were requested to allow a subdivision which was in some way substandard with respect to the regulation. Relief from the regulation could be considered on the following terms: where "compliance with provision of these regulations is impracticable or undesirable because of circumstances peculiar to the subdivision, the Director or the approving authority may recommend that the appellant be relieved in whole or in part from complying with such a provision; where the Director or the approving authority so recommends relief, reasons shall be submitted to the Board;" (Alberta Regulation 185/60 s. 12(1)(2)).

Over one-half of the waivers that came before the Board were requesting some measure of relief from the regulations governing the provision and location of reserve land. Section 22 of the Subdivision and Transfer Regulation required that "when land that exceeds two acres in area is subdivided, such parcels as the Director, the approving authority, or the Board may designate as may be specified by the other provisions of these regulations shall be reserved for provincial and municipal government use and other public purposes..." (Alberta Regulation 185/60 S. 22(1)). Reserves could be defered by covenant where subdivided parcels were over 20 acres in size (s. 22(2)), and provision was made for there to be no declaration of reserves where "the land being subdivided is a parcel

being created within a previous subdivision which contained reserves amounting in area to not less than ten percent of the total area then registered under a plan of subdivision; or where the total holding of the applicant, including the land being subdivided and any other land in the vicinity thereof is less than four acres in area, and the approving authority or Director is of the opinion that a reserve is not required" (Alberta Regulation 185/60, s. 22(4)(a)(b)).

In spite of the 'built in' exceptions, section 22 was waived more frequently using section 12 of the regulations. Waivers were requested by the C.D.P.C. for twenty-six separate subdivisions and in every case the Planning Board granted the requested exceptions. Twenty-two subdivisions had their reserve requirements waived outright and four had their reserve requirements waived but with a covenant placed against the land title stating that the reserves could be taken at a later date. With this particular section of the regulation, it seemed that Planning Board approval was virtually assured.

Not all requests for relaxation were as acceptable, however. In two instances particularly, sections of the Subdivision and Transfer Regulation prompted some concern on the Board's part. The most important of these involved section 17, which concerned conformity with local planning measures. The section read "land which lies within or adjacent, whether in the same municipality or not, to an area for which a general plan, development scheme or zoning bylaw is in effect or in course of preparation may be subdivided only in conformity with the provisions of such general plan, development scheme or zoning bylaw or with such extension thereof as in the opinion of the Director or the approving authority is reasonable and logical" (Alberta Regulation 185/60, S. 17). Hypothetically, if local planning measures were given precedence over other land use controls there existed a possibility that the Board would have little control in some areas of planning. As one Board member wrote: ":This does not seem beneficial policy for individual commissions or other approving authorities to take without Board instructions. The Provincial Regulations are, after all, only <u>minimum</u> standards, not maximum" (Alberta Planning Board file 62-C-32). The Planning Board later confirmed that concern over this particular section was not well founded, as local planning measures first required Board approval and the authority stated in section 17 extended only to policies adopted by the local subdivision approving authority.

In some circumstances the police powers given to the Planning Board were quite strong. For example, section 65, concerning subdivision in the vicinity of highways, provided that only subdivision requests for 20 acres or more, or locally approved industrial parcels, or highway commercial lots could be approved by a local approving authority. All other land uses or parcels of lesser size had to be approved by the Board. In two cases (Alberta Planning Board files 62-C-109 and 62-C-32) the Board was asked by the C.D.P.C. to provide 'prior approval' to two subdivisions it had approved near highways. The problem arose when it was noted that neither of the subdivisions conformed to the land uses that could be approved locally. This placed the C.D.P.C. in an embarassing position, particularly as both parcels were for country residential land uses. Such a land use on parcels of 20 acres or more was not contrary to any local regulations and was not contested by the Commission. As requested the Board granted 'prior approval' in both cases but also sent a letter to the Commission to the effect that the classifications of rural land uses would have to be improved. "This problem only seems to confirm that our definitions of agricultural parcels, small holdings, and country residences need tightening up...It is only recently here that this common method of administration of planning has brought to light new problems such as this...Now we can begin to sort these out and develop this urban-rural differentiation we need" (Alberta Planning Board file 62-C-32).

4.3 Subdivision Appeals and Board-Ordered Variance of Local Policies and Provincial Regulations

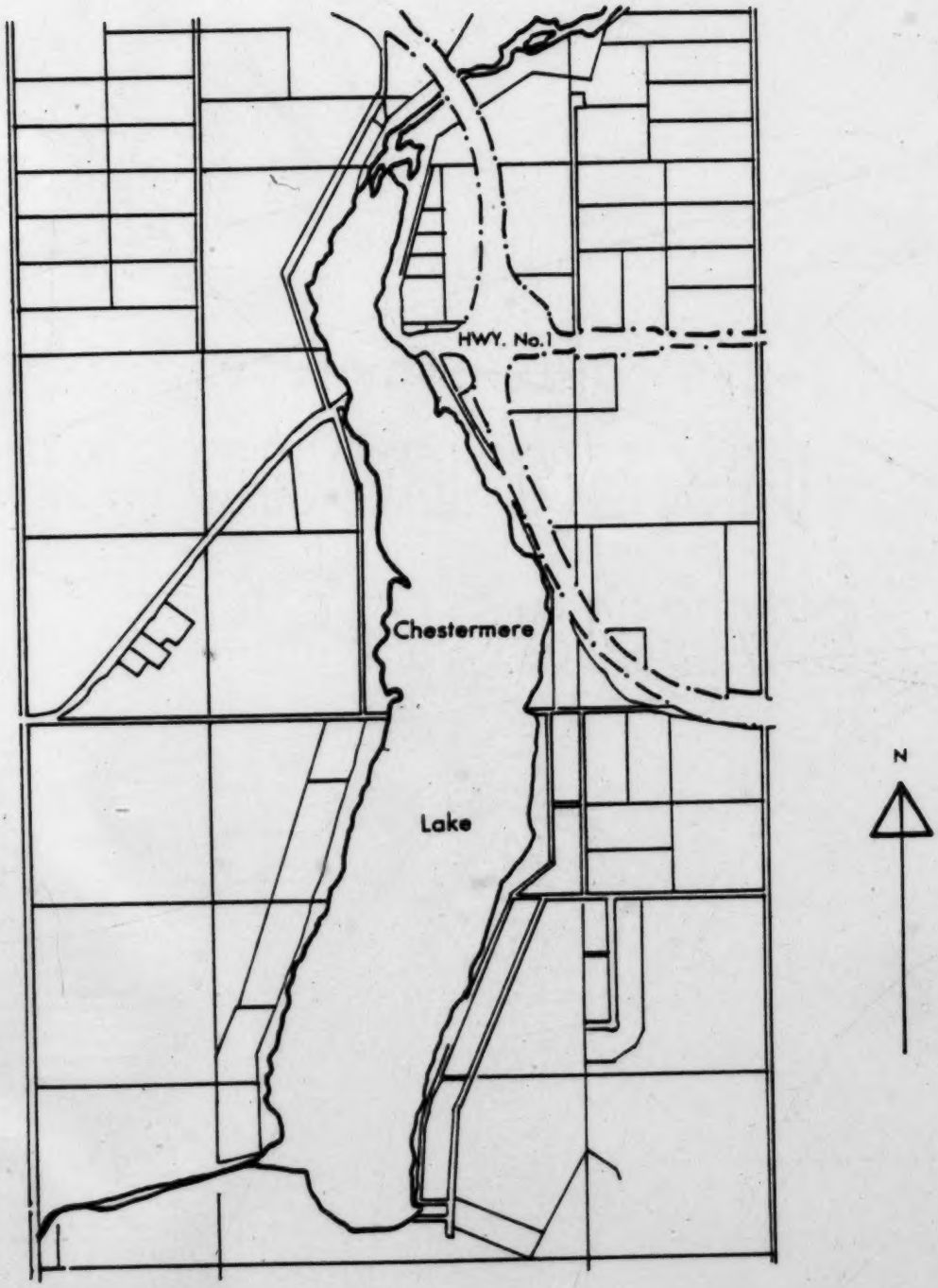
In the absence of policies defining and regulating urban-rural differentiation, a number of essentially urban forces were causing concern in the district. The demand for country residential properties as well as for recreational cottage land was being met at the cost of agricultural land. Additionally, the ire of Municipal District officials was aroused by the potential demands for road and service improvements to developments they regarded as incompatible with the agricultural character of the area. At least one summer cottage development of considerable size existed in the district, in the face of long term objections and the fact that it was unsubdivided, unregistered, and unsurveyed. This was the Chestermere Lake development which, in the words of the Director of Town and Rural Planning, was "an existing deplorable and unauthorized mess" (Alberta Planning Board file

60-C-67).

An irrigation reservoir, Chestermere Lake was purchased by the Western Irrigation District (W.I.D.) from the Canadian Pacific Railway in 1945 (see map no.3). It was generally assumed that the use of the lake would remain unchanged, but the W.I.D. began to lease lots on an annual basis for cottage use. This caused great concern to people living above the W.I.D. lands around the lake on lots registered decades before by the C.P.R.. Those landowners were given 'express understanding' by the C.P.R. that they would have full use of the lake frontage parallel to their parcels. After the W.I.D. takeover that became increasingly difficult. In 1959, the holders of legal lots obtained an injunction prohibiting further construction of cottages on W.I.D. lands. Construction continued in spite of the injunction.

The legal difficulties it was encountering prompted the W.I.D. to clarify the legal status of the development and in 1960 it brought a plan of survey for the lake lands to the C.D.P.C.. The plan was intended to serve as a base for a subdivision request which, if granted, would have solved problems relating to the legality of the development. The council of the Municipal District was adamantly opposed to the development as it felt that it then would have to assume responsibility for constructing, to municipal standards, all the roads and services necessary for the development. The C.D.P.C. also opposed this attempt to legitimate the development since it was substandard with respect to requirements governing zoning and land use, public reserve land, minimum lot sizes, sanitary arrangements, construction quality standards, floor area requirements, and the like. The existing development was also thought to jeopardize future subdivision and development in the area. The C.D.P.C. was of the opinion that all existing development should eventually be removed. In the face of this, the Chestermere Lake leaseholders made strong appeals for the development to be legitimized.

In coming to its decision the Board was motivated by as desire to find a 'permanent solution' to the Chestermere Lake problem. The Board accepted the C.D.P.C.'s contention that the proposal was unacceptable in a number of respects but the board also viewed the request with the considerable existing development in mind. It ruled that the Commission's desire to have all development removed was "unrealistic and impracticable". Instead the Board ruled that a new plan of subdivision to accommodate the existing development be



Map No. 3
Chestermere Lake and Vicinity
Scale 1:56320

drafted. The plan was to adhere as closely as possible to the Subdivision and Transfer Regulation and where that was not possible the various requirements could be waived. In addition the Board allowed for 'infilling' and the creation of new lots. The W.I.D. was made responsible for the provision of all services, to municipal standards, and was forbidden to allow any new development without the approval of local health authorities.

In a Board member's words: "In making its decision, the Board literally bent over backwards, reversed the decision of the Calgary District Planning Commission, and issued a modified approval itemizing five conditions. In effect, these conditions implied a new and limited subdivision plan would have to be prepared, some of the elements of which would perforce have to remain substandard, with suitable waivers of the appropriate regulations; that the standards in other parts of the new plan would be improved, adequate utilities and services and park reserves would be supplied to the development" (Alberta Planning Board file 60-C-67). Clearly, the intent of the Board Order was to make the best of a bad situation. Yet, the board seemed to sidestep the larger issue of whether recreational residences were compatible land uses for the district. It instead attempted to deal with the tangible complaints of the W.I.D. and the M.D. of Rocky View, by regularizing an irregular situation and by requiring environmental conditions to be imposed.

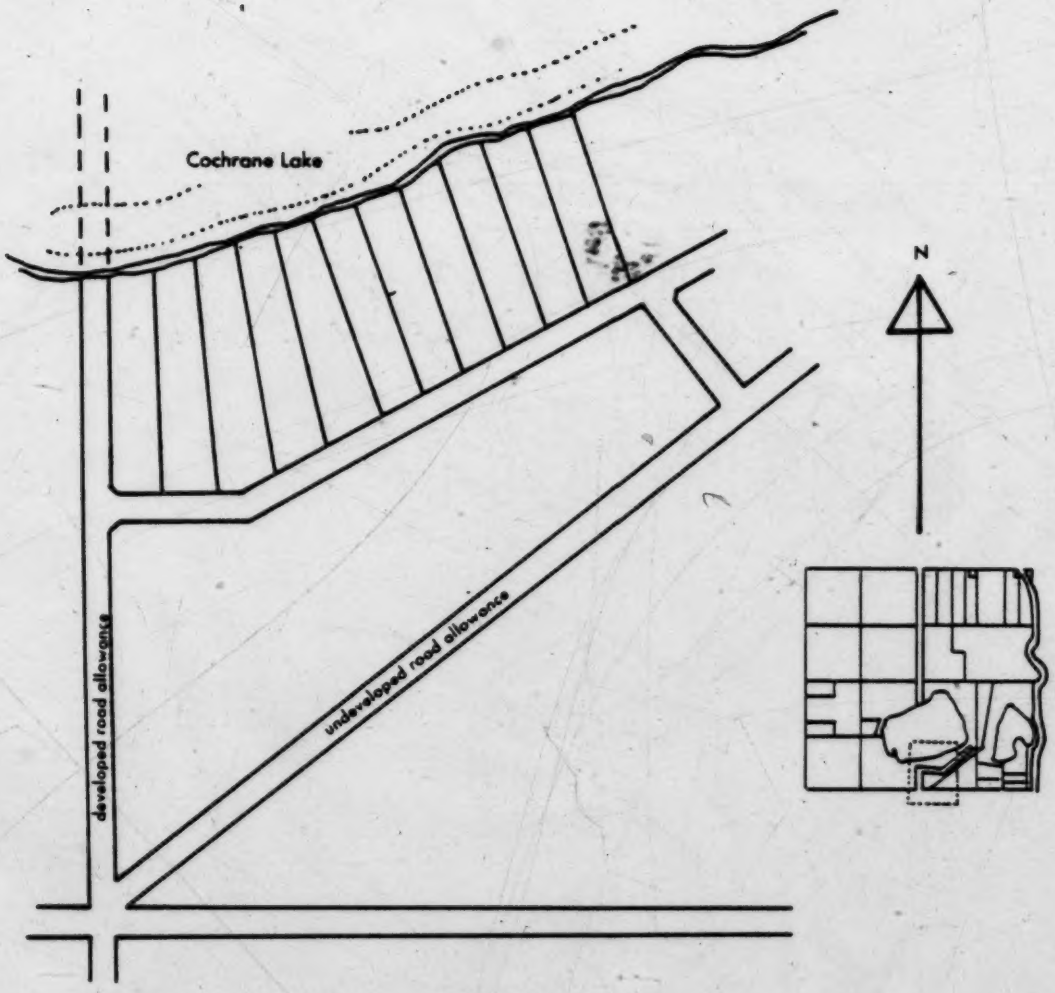
Shortly after the Chestermere Lake case was ruled on, another request for a cottage development was received for West Cochrane Lake (see map no.4). Again, the proposal to create small recreational lots was strongly opposed by the M.D. of Rocky View for many of the same reasons as at Chestermere Lake. A principal difference between the two proposals however, was that at West Cochrane Lake there had been no previous subdivision or development (Alberta Planning Board File 61-C-11).

The Municipal District and the C.D.P.C. were opposed to the creation of small lots in an area zoned for low density agricultural use, where the minimum parcel size was 20 acres. In addition, the C.D.P.C. found that the proposed subdivision design was not suited to the topography of the area. In defence of the proposal, the appellant claimed there was a demonstrated need for summer cottage sites and that the fears of the municipal district concerning the transition of the development from summer use to year-round use was unfounded. He also stated that as the general public was already using the lakeshore he was suffering hardship, presumably since he could not capitalize on the land.

Again the Board did not address the general issue of the compatibility of recreational land uses in the district. It did, however, rule that a limited subdivision could go ahead and allowed 11 lots adjoining the lake to be created, so long as the appellant constructed roads to municipal standards at his own expense and dedicated approximately 5 acres of land for community reserve. The Board also agreed that when 60 percent of the lots had been developed, applications for additional lots could be made.

The West Cochrane Lake case came back before the Board when the appellant charged the C.D.P.C. with obstructing the passage of a revised plan of subdivision. The re-hearing focused on the partial use of the original design proposal, as the appellant and the commission could not agree on plan revisions. The major issue was the location of community reserve land but in reaching a decision the Planning Board allowed parts of the original design to be used and relaxed the reserve requirements until additional lots were requested. By relaxing the required reserve dedication the Board effectively ruled that the appellant did not have to provide public reserves adjacent to the lake. The land proposed for community reserve by the C.D.P.C. could, if not declared reserve land, be used for additional, higher priced, lake front lots which, the C.D.P.C. argued would make the lake less accessible to the public.

The requirement that 10 percent of subdivided parcels be dedicated for use as community reserve was contentious. The relatively large numbers of requests to waive the requirement illustrated this, but in addition to the provision of reserves, their location within a parcel was open to argument and appeal to the Board. In one such case (61-C-114), a subdivision appeal was lodged by the owner/developer of a quarter section who wished to subdivide it into two 80-acre parcels. The C.D.P.C. approved the request subject to the provision of a 16-acre reserve parcel and the construction of a service road. The appellant took exception to the location of the reserve, which the commission had wanted adjacent to the service road, shared equally by each 80-acre parcel. In the Board Order the appellant had the dedication of reserve land deferred by covenant until future subdivision made it necessary. The Board further stated that reserve parcels were not considered advisable when they were so near a highway. Thus, in a matter of technical judgement, the commission was overruled.

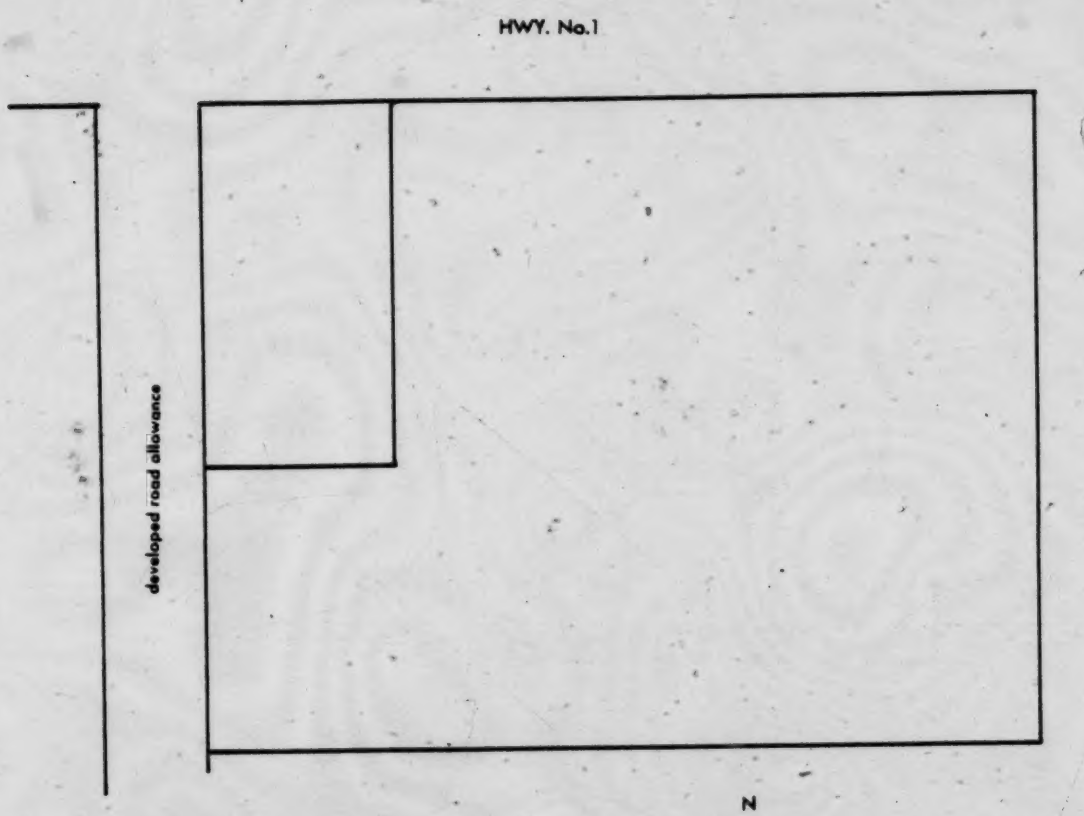


Map No. 4
Cochrane Lake and Vicinity
Tentative Plan of Subdivision
for Appeal No. 61-C-11
Scale 1 : 4900

In yet another appeal, the C.D.P.C. was overruled regarding the local 'two-parcel' rule which was developed to restrict the number of subdivisions being applied for and to reduce indiscriminate subdivision. This goal was served by allowing land owners to take only two parcels at a time, irrespective of their size. No further subdivision could be requested until the previously subdivided parcels had been developed.

In the case in point. (Alberta Planning Board file 60-C-62) the C.D.P.C. refused a subdivision request for a third 20-acre parcel on a quarter section as the previously granted parcels had not been developed. The appellant stated that the lots had been sold for country residential use separately but that construction had not been started. In view of the fact the lots had been sold the Board allowed the third subdivsion to proceed and attached the condition that suitable reserves would have to be provided should further subdivision take place. In effect, the Board reinterpreted the local policy and placed greater emphasis on the fact the lots were sold rather than developed.

The Board's differences of interpretation of local policies as well as provincial regulations accounted for most of the decisions in which the Board overruled the Commission. There did not seem to be a great deal of outright disagreement with local planning actions or their aims, although nearly every case that came before the Board in this period was approved in some measure. There was one case, however, where the C.D.P.C. and the Board were in final agreement. It began in January 1959 when an owner of land adjacent to the Trans-Canada Highway in the Springbank area, immediately west of Calgary, applied to the M.D. of Rocky View Interim Development Board for permission to develop a motel (see map no.5). The I.D.B. advised the landowner to wait for the completion of a study of commercial land needs for the area. The landowner purchased an additional 20-acre parcel before the study was received and requested that this parcel be subdivided so as to provide 220 frontage feet along the highway for a commercial lot. That particular request was later abandoned but in April 1959 the commercial study of the area indicated that a highway commercial strip could be etablished. That decision prompted the landowner to apply to the M.D. for the rezoning of this property from agricultural land use to highway commercial and country residential land use. The I.D.B. deferred a decision on the request as it wanted to see the plans for the proposed development. When the development plan was received, the I.D.B. ruled that it had insufficient data on which to



Map No. 5
Tentative Plan of Subdivision for
Appeal No. 62-C-37
Scale 1:3800

base a decision about the zoning change. The landowner, however, was back before the I.D.B. in January 1960 with a request for 1-acre lots; the request was refused due to the extreme sloping topography of the land in question. While the I.D.B. was deliberating the former matter, the landowner made an additional application to the Minister of Highways regarding the construction and placement of service roads, set-backs and accesses to the 'Springbank Campground', an entirely new development proposal.

So great was the confusion regarding the proposals and the various decisions or deferrals pertaining to the case that the landowner's surveyor requested information as to whether there was any possibility that an appeal could be convened to sort the matter out. An appeal was not possible since there had been no formal request to the C.D.P.C. for a subdivision. In April 1960 the I.D.B. gave its approval to the proposed 'Springbank Campground' to be situated on a 10 acre parcel and in a different matter, the request for subdivision was refused by the C.D.P.C., thus making the right of appeal available to the landowner.

While preparations for this appeal were being made the landowner sent yet another request to the I.D.B.. In this instance the request was for five-acre parcels. That request was refused as the minimum parcel size for the land in question was 20 acres. The landowner also went before the local subdivision committee to request 8 one-acre commercial lots and an undetermined number of 3-acre to 9-acre residential lots on the balance of his property. This request was refused on the basis of prematurity and irregularities with respect to the Subdivision and Transfer Regulation. Undaunted, the landowner then requested the I.D.B. to approve a permit to allow the operation of a ski tow on the land. The matter was referred to the C.D.P.C. but was later abandoned by the landowner. At approximately the same time, the landowner also abandoned his appeal to the Board with no explanation.

In December 1961, yet another request for rezoning was made to the I.D.B.. This was to rezone a 5-acre parcel from agricultural use to highway commercial use as it was the landowner's intent to develop a motel and restaurant on the site. The I.D.B. agreed to this request and made a recommendation to the C.D.P.C. that it approve the subdivision. The C.D.P.C., however, could not approve the subdivision request since there were 10 undeveloped, subdivided properties in the immediate vicinity and the subdivision was

considered to be substandard with respect to access from the highway. In addition, the dimensions, shape and orientation of the parcel were considered to threaten future convenient subdivision.

The gravest difficulty with the subdivision in the Commission's opinion, was its difficult access. To a large extent, however, the commission was influenced by the Department of Highways which was said to be "very much concerned with the possible extension of ribbon development at this point... You will realize that if this area is developed, it will very seriously restrict any possible treatment of access to the Happy Valley area...We are attempting to set up an overall plan for this section of highway, and would not wish such a plan prejudiced by future extension of the subdivision... The Department must very carefully study any intersection treatment, such that it will fit in the overall plan, and not be simply to satisfy one specific development" (Alberta Planning Board file 62-C-37). It would seem clear that the C.D.P.C. seriously considered the subdivision but that the Department of Highways objections mitigated against its approval. Those objections also influenced the Board's decision to deny the subdivision when it came to appeal. The Board believed the subdivision would not provide for convenient, economic or orderly development and so was not in the public interest.

Aside from illustrating the position of influence occupied by the Department of Highways, this case illustrates the non-cohesive nature of the planning instruments then in effect. The fragmentation of authority could hardly be avoided since development controls and subdivision controls were administered by separate bodies.

4.4 Interim Findings

The various waivers and subdivision appeals leave an impression that they were dealt with as discrete events with no particular aggregate effect upon each other or upon the aims and goals of planning in the area. There did not seem to be a 'systems' view of planning capable of placing the appeals in a broad context. This could have been due, in part, to the newness of the system of planning administration or to an attitude that the appeals did not particularly affect plans or planning to any great extent because they were exceptions to the rules. Certain Board members did indicate that they recognized problems which had arisen through 'the common method of planning administration', but there was

no evidence that the Board saw itself as having any relation to the problems other than as the central authority designated to solve them.

It is difficult to estimate whether the Board's appeal activities had any marked effect upon the attainment of local planning goals in the municipal district. This is principally due to the absence of any policy plan or widely accepted local planning priorities. There were several instances where the Board overruled local regulations, notably the two-parcel rule, but the Board also attempted to relieve the district council from most of the direct fiscal effects of the subdivisions it was allowing through the appeals. In short, it seemed the Board had not yet grasped that its allowance of exceptions could have any long range impact or might compromise local planning goals and principles. Indeed, the appeals were characterized by a desire to accede to private will while moderating the financial effects to the district purse. The only party not figuring in the solution was the local planning agent, the C.D.P.C.

5. ADVICE AND DISSENT: THE PRELIMINARY REGIONAL PLAN AND SUBDIVISION APPEALS

5.1 The Purpose of the Preliminary Regional Plan

The preliminary regional plan was the first comprehensive land use plan compiled by the Calgary District Planning Commission. It was a collaborative effort, reflecting the hopes and biases of the member municipalities. At the same time, however, it was directed by the basic requirement imposed upon all plans and planning in the province – that they secure orderly and economical development. The preliminary regional plan did introduce a new kind of order into planning at the regional level. For the first time, in any comprehensive form, there was a single document which outlined the planning objectives, general development policies and more particular rules and schedules relating to the control of land on a regional scale. Also relatively new was the statutory requirement that local municipalities adhere to the principles set by the plan, an item that, perhaps more than any other, gave force to regional land use controls.

The preliminary regional plan, it should be noted, was not a regional plan when it was first adopted in the summer of 1963. It was a preliminary district plan. But the Planning Act, 1963, struck the word 'district' in favour of 'regional', presumably to illustrate the wider nature of planning and its gradual extension into rural hinterlands.

The preliminary regional plan adopted a 'broad brush' approach. It was envisaged as a first level plan, above even the official regional plan. It was preliminary in that little substantial information had been gathered, and little was known about the regional demand for land, the particular types of land desired or the preferred locations. Under the circumstances, it was impossible to draft specific policy statements or control techniques. The plan had to be flexible to be enforceable and still serve the general objectives, without being bound too severely to particular rules and the risk of arbitrariness.

The objectives of the plan were varied in both substance and generality. At the most general level were statements about the desirability of providing advice and assistance to the member municipalities and the value of planning measures as an aid to orderly and ecnomical land development. At a less general level, the C.R.P.C. advanced its

own objective that all development in the region be governed by plan provisions concerning the conservation of the natural and aesthetic resources of the area. On a still less general plane, the plan related a number of elements that affected the choice of more immediate, smaller scale objectives. First, the Commission saw the planning area as a territory in a state of transition, faced with a steady growth in demand for both urban and rural land and a corresponding increase in the varieties of use the land was put to. In a relative sense, these factors were likely to have greater impact upon the rural areas, which had previously been quite homogeneous in their development characteristics. A clear differentiation between urban and rural activities and land use was therefore seen as a desirable objective. The Commission observed that urban environments and their characteristically higher densities of development were the outcome of forces causing concentration. The demand for services of urban standards required urban population densities to sustain them, whereas rural lands, in the Commission's view, "are best suited to extensive types of prairie and ranchland agricultural methods which support a low density of rural population served by sparsely located urban market centres" (C.R.P.C. preliminary regional plan, 1964, p.4).

As part of the objective of urban-rural differentiation, the topic of small parcel development was discussed. It was thought that "the absence of vegetation, uncertain ground water supplies, high costs of heating and home services, and uncertain road conditions" made this form of subdivision impractical in the Calgary area. It was also considered to be incompatible with the rural economy, to the extent of provoking general resistance to the uncontrolled penetration into rural territories of types of activity more appropriate to an urban setting (C.R.P.C. preliminary regional plan, 1964, p.5).

The statement of objectives was followed by the general development policies which supported the notion of an urban-rural division of land uses. The policies further reflected the view that the region was an urban-centred one and that the city of Calgary should therefore have enough land to contain its anticipated expansion. In addition, the land uses adjacent to the boundaries of the city were to be compatible with the future expansion plans of the city. Generally, densities greater than one person per acre were considered to be too high for rural residential land uses and were, therefore, to be restricted to urban areas. Similarly, secondary and heavy industry and most types of

commercial activity were seen as essentially urban activities and best contained within urban boundaries. Rural activities were to be those that were land extensive or had ties to the rural economy. Rural development of any kind was to respect the principle of conservation.

The general development policies were further underscored by a large body of controls over land subdivision and the dedication of public reserve lands. These were not simply reiterated from the Subdivision and Transfer Regulation, but formed a second defence for the local development policies by tying them into the subdivision control system in varying degree. The control of development was a municipal responsibility but subdivision control was vested in the commissions. It thus provided the Commission with its best means of influencing the development control process and so implementing its own development policies.

Foremost among the subdivision-related controls was the two-parcel rule. This stipulated that a landowner could subdivide only two parcels at any time, and that no further subdivision could be applied for until the first two parcels had been developed. The intent was to limit the numbers of parcels available at any one time to a level which truly reflected demand. The policy was uniform throughout the regional plan area, and applied to townsites and hamlets as well as to quarter sections.

Cottage hamlets were also subject to many more specific controls. The most basic one was that land considered for development had to offer tree cover, adjacent water, suitable topography and relative isolation. In general the developments were to be of a cluster type, containing ten to forty lots of one-half to one acre. Forty lots was to be the maximum that could be subdivided from a quarter section, and there had to be a liberal public reserve dedication. When taken together, the regulations look rather like development controls in the guise of subdivision control.

As part of the objective of fostering conservation, the plan contained fairly detailed provisions for the conservation of water and land resources. For instance, the commission determined that water resources should be available for public benefit and required that where a water body formed a boundary within a parcel, legal access had to be created to both portions of the property. The commission also required that public reserves in areas adjacent to water bodies should be located so that they could be of long

term use to the public. The latter was sure to stir up an already contentious issue, but on another aspect of the public reservation problem the Commission clarified its policies. Essentially, two zones were created for reserve dedication purposes. In the zone closest to developments of an urban kind, the designation of reserves could not normally be deferred; in the more distant zone, the reserve requirement might be deferred or waived altogether.

The statement of planning objectives and control instruments in the preliminary regional plan give some indication of the level of development control available without really describing how it was to be used. This was advanced next, in a lengthy section in which the different land use classes were defined, and schedules of permitted and restricted uses set out.

The two most basic land use classes were very similar. 'Low density agricultural' areas and 'ranchland agricultural' areas were proposed to "preserve the rural character of the area by encouraging compatible development and maintaining a low density of population" (C.R.P.C. preliminary regional plan, 1964, p.24). Uses permitted under these categories were extensive cultivation, ranching and dairy farming. Rural residences were permitted only when they were incidental to a farm or ranch. In addition, such uses as intensive agriculture (feed lots, greenhouses, tree farms, etc.), natural resource extraction, institutional and public buildings, and campgrounds could be permitted at the discretion of the Interim Development Board of the municipality. The minimum parcel size permitted for any use was 20 acres.

In the 'parkland recreational' class, allowance was made for extensive agricultural pursuits with incidental residential use. Other uses were either conditional or not permitted. The intent was to conserve environmental reources in an area of scenic beauty, whilst providing an opportunity for country recreational resorts and cottages to be permitted conditionally. Natural resources extraction and 'accessory' facilities might also be permitted, at the discretion of the Interim Development Board, but all conditional development was subject to controls governing its appearance and character. The minimum parcel size was 40 acres.

A fourth land use designation, 'special development', introduced a series of controls to require careful planning of urban-rural fringe areas and areas of recreational

potential. The permitted uses, once again, included extensive agriculture, but they were extended this time to 'urban uses on approved sites'. The number of conditional uses was quite large but all were faced with one condition overriding all others: the C.R.P.C. was to advise the municipality whether a proposed development was compatible with the environs prior to any development approval. The 'special development' category, it seems, was created as a kind of development control technique for the Commission. This was underscored by the restriction of a minimum parcel size of 160 acres on extensive agricultural land uses and a 20-acre minimum on conditional uses. In the event of a development being proposed in the area the Commission could effectively rule upon its acceptability twice, first in the form of a recommendation to the municipality and, second, in the form of a decision on the subdivision application.

A fifth class of uses, 'highway development' relied upon a similar set of land use controls. Here, however, there were two permitted uses: the ubiquitous extensive agriculture and incidental residential uses and land used by the Department of Highways for maintenance yards and signs. Conditional land uses were also limited to highway commercial lots, signs, government picinic and camp sites, natural resource extractive industries and certain acessory uses. All conditional uses required the recommendation of the C.R.P.C. before they could be locally approved, and they had to be examined for compliance with provincial regulations. Without Commission approval a development permit would not be issued. The intent of all the scrutiny and control was to ensure the safety and convenience of highway users.

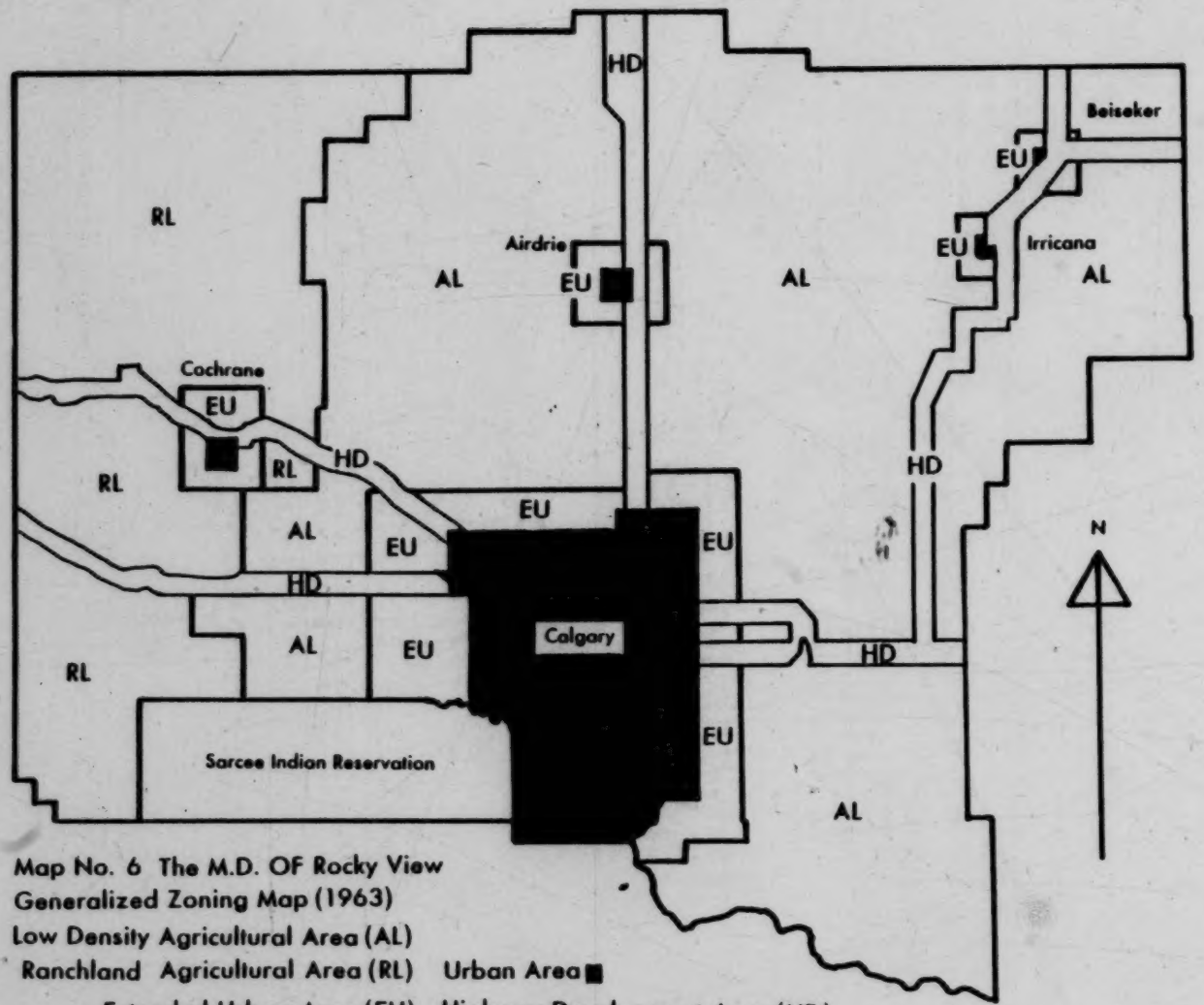
Finally, the 'extended urban area' land use designation was designed to provide a "protective belt around an urban municipality by preserving the rural character of the area, maintaining a low density of population, and permitting rural development compatible with the present and proposed development of the adjacent urban area" (C.R.P.C. preliminary regional plan, 1964, p.29). Again, the only permitted development was extensive agriculture and incidental residential use, but the conditional land uses were not as limited as in some of the other categories. This class took in the urban-rural fringe with its mixture of land uses. The conditional land uses were intensive farming, natural resource extraction, institutional and public land uses, recreational lands, and the familiar accessory land uses. Here too, applications for conditional land uses had to be referred to the

Commission before they were ruled upon by the local Interim Development Board.

The only other land use class listed was that for urban areas. It would seem that the commission saw the urban areas as being essentially outside its control, at least at the time the preliminary regional plan was written.

Section 4 of the preliminary regional plan was a generalized zoning map which approximately outlined the areas deemed suitable by the commission for the various land uses (see map no.6). The actual land use classes were sufficiently broad or potentially able to accommodate exceptions that most types of development could be accounted for. It should be noted, however, that care was taken to try to discourage small parcel development in general, and country residential subdivision and development in particular. Indeed, the plan provisions seemed to be primarily oriented towards one goal: that of containing all urban development within the boundaries of urban jurisdictions. This meant, above all, that overspill development from Calgary was to be prevented if at all possible. The plan proposed that the goal be achieved through both development control and subdivision control. Development control was essentially in the power of the municipality although it was regulated by the plan and by the Commission where land subdivision was requested for development. The C.R.P.C.'s involvement with development control as well as subdivision control gave it a stronger power base to effect its decisions. It also allowed the Commission to relate municipal development decisions to the wider and longer term goals of the preliminary regional plan. In effect the Commission acted as a check to the local interpretation of the plan and to the local power to issue development approval.

Development control and subdivision control were, however, two separate powers conducted by two separate bodies and were only nominally unified where land subdivision was requested. That presented immediate difficulties when a subdivision was refused in the face of development approval from the municipality. The matter would usually be referred to the Planning Board for adjudication. The Board then effectively wielded powers of development control and subdivision control. If it consistently favoured municipal opinion, attainment of the plan objectives would be adversely affected. Yet if it ruled with the Commission, the desire of the municipality to develop would be halted. By having the controls thus intertwined there was preciously little middle ground.



Map No. 6 The M.D. OF Rocky View
Generalized Zoning Map (1963)
Low Density Agricultural Area (AL)
Ranchland Agricultural Area (RL) Urban Area ■
Extended Urban Area (EU) Highway Development Area (HD)

5.2 The Division of the Appeals

The preliminary regional plan, above all else, represented a body of policies which, over the long term (if implemented), were intended to ensure orderly and economic development. So important was the long term view, indeed, that the Commission saw planning as a continuing exercise with no particular end point. The municipalities, on the other hand, were headed by councils who had to achieve desired ends on a considerably more compressed time frame. This conjunction of long term planning goals with relatively short term municipal adminstrations was not necessarily incompatible, but it did mean that the C.R.P.C. and its member municipalities frequently viewed planning matters from different perspectives.These differences were further enhanced by the fact that the C.R.P.C. and the rural municipality administered separate land use control mechanisms.

In view of this, the subdivision appeals can be convincingly divided into two groups. The first contains subdivision proposals that the C.R.P.C. considered contrary to their long term objectives. The second contains those subdivision proposals which were considered by the M.D. of Rocky View or provincial agencies to be contrary to the best interests of the municipality. Since the municipal and provincial agencies were not subdivision approving authorities, they were not able to deny subdivision requests. They could, however, recommend that the Commission refuse an application outright or that it attach conditions to alleviate anticipated problems.

5.3 Appeals Arising as a Result of the Preliminary Regional Plan

The appeals which arose as a result of the provisions of the preliminary regional plan can be broken into four sub groups. Three of these, in particular, involve specific proposals which were disallowed by the Commission because the proposed land use was not allowed in a particular area under the land use classification guidelines. All of the subdivision proposals in this group were refused by the C.R.P.C. with little or no intervention from the Municipal District of Rocky View.

5.3.1 Subdivision Proposals Contrary to the Two-Parcel Policy

The two-parcel rule was one of the basic instruments of the preliminary regional plan. It was also unequivocal, and was so clear and simple that it was rarely challenged. It also helped that the policy had been in effect before the adoption of the plan, and had even then been vigorously defended by the Commission and repeatedly upheld by the Board.

In the first appeal against the two-parcel rule (Alberta Planning Board 66-C-99) it was found that a landowner proposed to subdivide parcels of 79 acres and 21 acres from 200-acres. The C.R.P.C. refused the request because there had been no development of the landowner's previously requested subdivision; if approval had been granted, three undeveloped subdivisions would have existed. At the appeal the landowner stated that he had a legal agreement with the prospective purchaser of the 21-acre parcel to the effect that a house would be constructed on the land within the year. The Board found that assurance sufficient to uphold the spirit and intent of the plan and allowed the appeal.

The C.R.P.C. and the Board were each capable of considerable compassion in matters where general aims were not liable to be distorted. An illustration of this occurred in August 1966 when a proposal to subdivide a 20-acre parcel in the immediate vicinity of two, as yet undeveloped, parcels was made to the C.R.P.C. The Commission refused the request as it was contrary to the two-parcel rule. The landowner, however, had purchased the parcel with the understanding that approval was assured and had succesfully bid on a house in Calgary with the intention of moving it onto the 20-acre parcel. Since time was short (the house had to be moved from the city by the end of the month) the Board took the unprecedented step of conducting the appeal hearing by mail. In the decision it was noted that the subdivision was not of a speculative nature and that the potential hardship was great. The Commission and the M.D. were not opposed in principle to the subdivision, only to the fact it contravened the regulation. The Board therefore ruled that the appeal be upheld and the subdivision accepted, though taking the precaution of specifying that the decision "in no way creates a precedent at variance with the policy of the M.D. of Rocky View for any future subdivision of like nature" (Alberta Planning Board file 66-C-84). In effect the Board had reemphasized its intention to uphold the two-parcel principle.

The Board's defence of the Commission's actions was a powerful reinforcement, to the degree that the two appeals dealt with here were the only ones to be made against the two-parcel rule. In both instances the circumstances were irregular and neither appellant disagreed in principle with the regulation. It is also evident that the Board, in examining the appealed cases, looked to uphold its spirit and intent.

5.3.2 Subdivision Proposals Not Meeting Public Reserve Provision Guidelines

One of the first preliminary regional plan policies to cause an appeal concerned the provision of public reserves for subdivided land. Dedication of reserves had previously been required by the Subdivision and Transfer Regulation in particular circumstances, but the subdivision approving authority had been allowed considerable lattitude in deciding whether the reserve should or should not be taken and how it would be reserved for public use. The preliminary regional plan effectively narrowed the range of choices for the Commission. Land lying in a 'primary public reserve area' had to have the public reserve provided outright or deferred by caveat before the subdivision could be approved. Land within a 'secondary public reserve area' could have the reserve dedication requirement waived in particular circumstances, but there was clearly the intent that where two or more parcels were created on a quarter-section, public reserves were to be made.

In December 1963 the Board ruled on a case (Alberta Planning Board. 63-C-67) involving the creation of two new titles. About 205 acres of land was to be subdivided to form a 60-acre parcel and a 145-acre parcel. The M.D. of Rocky View and the C.R.P.C. both recommended that public reserves be taken, as the land was near the town of Cochrane. The C.R.P.C. approved the subdivision request with the condition that 20.5 acres of land be deferred by caveat until the landowner requested further subdivision, at which time the land would have to be deeded to the municipality. The landowner believed that a dedication of public land was unwarranted and that it compromised his position as a seller or developer of his land. The Board, however, did not agree, noting that the dedication would not take effect until there was subsequent subdivision. The Board also noted that the preliminary regional plan specified that where two new titles were created on a quarter-section, public reserves were to be dedicated. Accordingly, it ruled that the appeal be denied, and so gave effective backing to the C.R.P.C..

Yet each appeal hearing was a discrete event. A Board ruling favourable to a policy did not necessarily mean that adverse decisions could not follow. In one such case (Alberta Planning Board file 66-C-12) a subdivision proposal was made to create two 20-acre parcels. On the recommendation of the Municipal District of Rocky View, the proposal was approved by the Commission, on the condition that the landowner dedicated a particular portion of his land for a wildlife refuge to satisfy the public reserve requirement. That condition was the subject of an appeal to the Planning Board. At issue was the fact that the wildlife refuge was to be located in an area of particular beauty, which the landowner thought would add to the sale value of the land. The landowner contended that the wildlife designation effectively limited his ability to create specific lots. Further, if he was subject to the usual 10 percent public reserve dedication, he could defer the provision of the reserve. The Commission, on the other hand, claimed that it was necessary to make wildlife refuge dedications before the density of subdivision became too great. The Board allowed the appeal. The landowner was ordered to assume all responsibility for roadways, utlities and other services, but the principle of dedicating wildlife refuges had been dealt a severe blow. Yet it cannot be inferred that the Board disapproved of the Commission's objectives. Each appeal was judged on its own merits.

The fact that Board Orders were said not to set precedent was not universally known or understood. Instead there was a tendency on the part of the interested public to accept a Board decision in a wider context than the case to which it applied. This caused some concern to the C.R.P.C. because it believed that the manner in which Board Orders were worded was casting doubt upon the way it exercised its authority (Alberta Planning Board file 68-C-148). An example of such an order was written in response to a request for subdivision at Chestermere Lake. The subdivision proposal, which involved the division of 10 acres into cottage lots, was conditionally approved subject to the provision of 10 percent of the land in public reserve. When the condition was appealed, the Board determined that adequate reserve land had been provided in previous subdivisions, and that to require more "would be *ultra vires* of Section 19(6) of the Subdivision and Transfer Regulations". This decision was made on December 19th and by January 10th the minutes of the C.R.P.C. subdivision committee record the following: " The commission in its discussion did not question the wisdom of the Board's decision, but rather the wording of

the Board Order...The commission observed that under Section 19(6) of the Provincial Subdivision regulation it is mandatory that the commission require the dedication of reserve land in the circumstances attendant upon this application. It appears that the Provincial Planning Board...simply decided to relax the Provincial Regulation...but this is not stated in the Board Order. Rather, in the way the Order is written it is implied that the commission made a requirement beyond the authority of the Regulation and thus acted improperly, which is not the case". The chairman of the C.R.P.C. was requested to write the Board in an effort to have the Orders made more 'politic'. In that letter he explained that "the Commission's protest is not caused by the substance of the Board's declaration...it is purely a matter of appearance, and the commission's natural desire is not to seem to be exceeding its authority or making unreasonable requirements, particularly in cases where its decisions are limited by provisions other than its own". It was a reasonable request but not one that would have been made if the Commission had not believed that its authority was being compromised or was likely to be compromised. After the Commission's complaint there is some evidence that the Board Orders were more judiciously worded.

In some instances the Municipal District, too, made demands that had the potential to alter long range planning goals. In the late 1960's and early 1970's, for example, the municipal council began to demand the dedication of public reserves for subdivisions near the city of Calgary, irrespective of the size or extent of the subdivision request. In one case (Alberta Planning Board file 72-C-177) a landowner proposed to subdivide one 20-acre parcel from a quarter-section for which an outline plan had been prepared as a first step towards the subdivision of eight 20-acre lots. The C.R.P.C. approved the request subject to a condition that an internal access road be changed and that public reserves be dedicated in full. The latter condition was imposed by the Municipal District, which also stated that if the landowner preferred he could give the municipality cash-in-lieu of the 16-acre site. The Municipality additionally said that the cash-in-lieu would be calculated at $1000 per acre. The landowner claimed that $500 was more nearly the market price of the land and no compromise was reached. The matter was then taken to appeal.

The Board determined that a single 20-acre subdivision would not increase the density of the area to any appreciable extent. It overruled the advance provision of reserves, but reaffirmed the other conditions requiring the landowner to be responsible

for internal road construction.

A plausible reason for the Municipality's demand lay in the fact that territory near Calgary was under threat of annexation. Landowners were therefore given the option of dedicating land (which would increase in value over time) or of meeting the public reserve dedication by a cash payment. Clearly, the latter was the preferred alternative for people speculating in land. It was also particularly good for the Municipality, which would receive cash for land for which it might not have any responsibility in the medium to long term. In this instance the Municipality was motivated by short term thinking which jeopardized the long term outlook of the C.R.P.C. This, to a great extent, characterized the relationship between the Commission and the Municipality. The Board, through its decisions, was really, if unconsciously, determining whether long term goals were going to be attained or modified by piecemeal, short term considerations.

5.3.3 Subdivision Proposals Not Meeting Minimum Parcel Size Guidelines

The minimum parcel size guidelines were important safeguards to the various land use classes outlined in the preliminary regional plan. They were seen as the primary method of restricting the density of subdivision and, for that reason alone, were quite contentious. Indeed, compromise solutions were rarely possible. In one representative case (Alberta Planning Board file 64-C-126) a landowner wished to subdivide a 20-acre parcel from a 32-acre parcel that was isolated from its parent quarter-section by a railroad right of way. The request was refused because the 20-acre subdivision, if approved, would have left a residual parcel of 12 acres. This was legally part of the parent quarter-section, but because it was also detached the C.R.P.C. treated it as a substandard parcel under the preliminary regional plan. The landowner appealed the refusal on the grounds that it would cause him great hardship. In advance of the subdivision approval he had sold the 20-acre parcel and the buyer had constructed some buildings on it. The original owner had also constructed a new house on the 12-acre parcel and now believed that he would be sued if he could not convey title to the 20 acres. The Commission and the Municipal District, however, were unmoved by these difficulties. Each informed the Board that the landowner was aware of the need to get approval before construction was undertaken and so was not entitled to a hearing on compassionate grounds. In its decision the Board upheld the

decision of the C.R.P.C. and no compromise was offered, demonstrating most convincingly that a hardship appeal was a risky defence. The Board also confirmed the minimum parcel size requirements of the preliminary regional plan and the Commission's contention that parcels made substandard by isolation could not be treated as exceptions.

In a somewhat similar case (Alberta Planning Board file 65-C-31), application was made to subdivide a 5-acre parcel. The parcel had originally been surveyed and registered in 1915 by the Canadian Pacific Railway, although no title had been written. The Commission opposed the subdivision because the parcel was much smaller than the minimum required by the plan. The Board, however, accepted the landowner's contention that the parcel had existed for decades and lacked only a land title. Accordingly, the appeal was upheld and the decision of the commission reversed.

This appeal and the preceeding one are similar in that they ran afoul of the same planning regulation. Yet, their different outcomes underscores the fact that the Board was not bound by precedent. The two appeals also illustrate that, in making its decisions, the Board looked at what it felt was 'morally defensible'. In the first appeal the appellant was supposed to have known the risks of his actions; in the second, it was agreed that, for all intent, the parcel existed before the regulation had been drafted. To have declared it substandard would not have been morally defensible.

In another case a request was made to subdivide from a quarter-section a 9.1-acre parcel that had been isolated by the Trans-Canada Highway. The Rocky View municipal planning commission accepted the request in principle, so long as there was no direct access to the highway, reserves were deferred by caveat, and the Board relaxed the requirements of the Subdivision and Transfer Regulation concerning roadways. The C.R.P.C. approved the subdivision but also included a condition that the landowner survey his land prior to registration of the subdivision. The fact that the parcel was less than one-half the minimum parcel size was not disputed. The dispute that arose concerned the survey requirement.

At the appeal hearing the Board was "of the opinion that the conditional approval subject to a plan of survey [was] out of order", primarily because the municipal planning commission's approval had not demanded it (Alberta Planning Board file 66-C-31). Rather than sending the application back to the C.R.P.C. the board relieved the landowner from that

responsibility. The intriguing element of the case, however, was that none of the three planning agencies was concerned about the substandard size of the parcel. That was a far cry from past appeals where parcels of 12-acres had been refused. In addition, this parcel was in the primary reserve area, yet the reserve dedication was deferred and service road requirements waived. It can only be assumed that the parcel was deemed suitable for country residential development. But that, too, was contrary to land use designations for the area. While this case is not indicative of most it does show, once again, that precedent had little or no bearing upon the outcome of appeals. It also showed a remarkable lack of consistency among the three levels of planning authority. Such a situation was hardly likely to inspire confidence in any of the authorities or, for that matter, the policies and procedures they were supposed to defend.

In a somewhat similar case a landowner requested that a 10-acre parcel be subdivided into two 5-acre parcels. The land was classifed 'extended urban' and the minimum parcel size was 20 acres. One parcel was intended for residential use and the other for an equestrian stable. The municipality was opposed to the request because equestrian stables were classified as 'rural commercial' uses, and so were not permitted under the development control bylaw. The C.R.P.C. refused the request for that reason, and because the parcels were under the minimum size. At the appeal hearing the landowner claimed that there were numerous 5-acre subdivisions in the vicinity. The Board rejected the appeal and, while it did not furnish reasons for its decision, it is reasonable to assume that the development control bylaw figured more prominently in the decision than the minimum parcel size regulations.

Yet development control criteria did not consistently affect the outcome of appeals. In one such case a landowner proposed to subdivide a 20-acre parcel from his quarter-section. In essence this was a farmstead isolation request. The proposal was opposed by the municipal district and by the Commission because the parcel was below the muncipality's newly-adopted regulation that the minimum parcel size must be 40 acres. At the appeal hearing it was ascertained that the landowner obtained permission to subdivide the parcel two years previously but had not acted within the 12 month period that his permit had effect. In addition, the parcel size regulation had not been approved by the Planning Board, a point that figured prominently in the outcome of the appeal. The

Board stated that the regulation had "no force or effect" (Alberta Planning Board file 67-C-122) and thus upheld the appeal. It appeared that while the Board was prepared to make subdivisions amenable to the Municipality it was not prepared to have subdivision controls drafted and implemented by them without prior approval. That such approval was necessary underscores the Board's position of power with respect to most matters concerning land subdivision in Alberta.

Still, this first unfavourable reception did not deter the Municipal District and the C.R.P.C. from using the 40-acre rule again to refuse a subdivision request. In this instance the subdivision request was for two 40-acre parcels which would have left a residual parcel of 20 acres. At the appeal the Board reaffirmed its position that the opposition of the Municipal District and the Commission's refusal were baseless as they had not first obtained the Board's approval for the regulation. Accordingly, the appeal was upheld, on condition that a service road was constructed at the landowner's expense.

Written communications prior to the appeal indicated that the landowner's lawyer was taking 'strong issue' with the imposition of the 40-acre minimum parcel size. The matter was finally resolved by a further appeal, again involving a request for two 20-acre parcels. The half-section involved had previously been the subject of an outline plan indicating sixteen 20-acre parcels, two of which had been granted. At the hearing it was found that the commission did not consider itself bound to its prior approval of the outline plan for the quarter-section. It was also found that the specified parcel size for the area in the preliminary regional plan was 20 acres and that the landowner had sixteen options for purchase for his parcels.

The Board Order again determined that the regulation was invalid and that the C.R.P.C. had erred by refusing the application. Instead of allowing the subdivision, however, the Board declared that it could not render a decision. The Board, it seemed was not going to give any validity or legal standing to this particular instrument by ruling upon it. The Order instructed the C.R.P.C. to review the matter in terms of the Planning Act and the Subdivision and Transfer Regulation, 'wherein policies had force and effect'.

The 40-acre policy was, of course, a special circumstance but the Board revealed its particular reliance upon the Subdivision and Transfer Regulation and the Planning Act. It was the Board's job to uphold the two sets of statutes, but it must be remembered that

neither body of laws expressed the breadth of procedures found in the preliminary regional plan. Thus, simple reliance upon the Act and the Regulations amounted to a defeat of the preliminary regional plan and even to the exercise of regional planning.

5.3.4 Subdivision Proposals Not Meeting Land Use Guidelines

The land use classes represented a synthesis of numerous planning policies. That, alone, increased the likelihood that they would be contentious, and it was often difficult for the Commission to defend them. The objections of private individuals were strong, so the outcomes of appeals concerning subdivisions that were refused or conditionally approved because of land use class guidelines really determined whether desired planning objectives could be obtained in a particular way. In effect, the preliminary regional plan was predicated on the application of the land use classes and their reception in large measure was seen as determining the reception and outcome of regional planning.

The first appeal lodged before the Board was a proposal to subdivide 20 acres from a quarter-section in order to give the Department of Forestry title to a divisional site. As was their perogative as a provincial body, the building had been constructed without municipal or other planning approval. When the sudivision request was made, the Rocky View municipal planning commission recommended that it be refused, as the light industrial character of the land use was contrary to the provisions of the preliminary regional plan. The C.R.P.C. therefore had no choice but to refuse the subdivision application but the Board overruled the Commission. It might be suspected that the Municipal District was concerned to register its disagreement with the provincial practice of building first and asking questions later. For the C.R.P.C., however, the main issue was the appropriateness of large-scale developments in relation to the land use class guidelines. An extension to the existing cottage development at West Cochrane Lake illustrates this nicely.

West Cochrane Lake was the site of a cottage development that had been the subject of a 1961 appeal. The Board Order specified that when 60 percent of the lots had been developed the landowner could request additional lots and in 1966 that was done. In the meantime, however, the preliminary regional plan had come into effect, and did not permit summer cottage development at West Cochrane Lake. The municipal zoning bylaw also failed to make provision for that class of development at the lake. Accordingly, the

subdivision request was opposed by both the municipal planning commission and the Regional Planning Commission. In particular, the C.R.P.C. refused the request because it was contrary to the preliminary regional plan and to provincial health regulations.

At the appeal hearing the Board ascertained that the proposed addition of lots did comply with provincial health regulations; the Provincial Board of Health had issued a certificate to that effect. The landowner also said that he was entitled to consideration of new subdivision because it was specified in the original Board Order. He further maintained that the area was ideal for cottage development and that general improvements, such as piped water, lamp standards, a community hall and boat docks, had been provided. In essence, the Board concurred, noting that there was "at least, a moral obligation to allow the developer to develop a limited number of additional parcels that could be served by existing utilities and roadway facilities "(Alberta Planning Board file 66-C-3). In the Board's view, the preliminary regional plan failed to recognize that "large sums of money have been expended by the developer at the subdivision in the way of utilities and road facilities because of the conditions attached to Board Order 526/61." The developer was therefore granted permission to subdivide an additional 44 lots, with the understanding that development would then be complete and no further subdivision requests would be entertained. Above all else the decision was a pragmatic one, yet it begged a vital question. If the C.R.P.C. was overstepping its authority by limiting development at West Cochrane Lake through the preliminary regional plan, could it be considered to have any power to limit subdivision through plan provisions?

As the sophistication of subdivision proposals increased, their size, too, tended to increase. In one case a developer proposed to subdivide from a 320-acre parcel, four 40-acre parcels and 52 half-acre lots for the creation of a summer hamlet. The subdivision was intended to be phase one in a development which, when completed, would have featured seven 40-acre parcels and 80 half-acre lots. In addition, the landowner proposed to dam Dogpound Creek to enhance the recreational potential of the development, though he added that this action was not of prime consideration should it be strenuously objected to. Furthermore, the developer said he would raise the lot size to one acre if the authorities were more amenable to that. In any event, the landowner claimed that the development would be for part-time residential use as it was too far from Calgary to

allow routine commuting and natural gas was not going to be supplied, thereby increasing the difficulty of heating the dwellings for winter use.

The Municipal District of Rocky View tabled the subdivision application in order that it be circulated for comment, and made no determination with respect to the development's appropriateness under the land use bylaw. The C.R.P.C. refused the application while it was tabled by the Municipal District. In the refusal the commission cited the lack of municipal approval for the development and stated that it was contrary to the preliminary regional plan. The commission further questioned the suitability of the creek as a base for a high density resort development and stated that an outline plan should have been submitted first, to allow the municipality and the commission to contribute to the planning of the development. The owner, not surprisingly, denied the need for this step.

The subdivision was of a scale that aroused much attention. At the hearing the Municipal District of Rocky View and the C.R.P.C., the Red Deer Regional Planning Commission, the Water Resources Division and Fish and Wildlife Division of Alberta Environment were present, as well as the Department of Agriculture and other interested parties. The Fish and Wildlife Division was concerned that the construction of a dam on the creek would adversely affect stream flow, water temperature, fish stocks and siltation. The Water Resources Division was concerned that the dam would increase flooding potential of the creek. The Department of Agriculture's concerns centered on the pollution of the creek and the problems of weed control. Ranchers in the area opposed the development for many of the same reasons and included even more, such as increased fire hazard, cattle rustling, destruction of pasturage and the inadequacies of the road system. In the face of this overwhelming opposition the Board denied the appeal for three reasons. First, there was inadequate provision of access to the lots; second, the Municipal District of Rocky View had not considered the development in terms of its land use bylaw; and, third, the possible pollution of the creek had not been properly addressed. The Board Order did not state whether the proposal should have been submitted in the form of an outline plan. That, by its omission, left the way clear for other schemes to be submitted to the commission and thence to the Board without any prior investigation of their potential impacts upon their local environments. Yet, the expression of concern about the possible pollution of the creek showed a willingness on the Board's part to support environmental

policies, much as it supported the Department of Highways.

5.4 Appeals Arising From Other Causes

The majority of appeals arising from causes other than the preliminary regional plan, contravened regulations or policies of agencies other than the Regional Planning Commission. Indeed, it is an ironical twist that the Commission had to refuse subdivision proposals that did not necessarily run counter to its own policies. The C.R.P.C., however, was but one of the agencies with an interest in the subdivision control process. These appeals show quite clearly how that process was used to further the objectives of the local municipality and various provincial bodies.

5.4.1 Subdivision proposals approved subject to Municipal District road construction provisions

The scrutiny of subdivision proposals was not limited to checking that the preliminary regional plan was respected. Increasingly, in the 1960's, the Municipality looked upon the subdivision approval process as an opportune time to review its supplies of facilities and services with respect to the probable increase in demand that the subdivision would occasion. Frequently, this review would end with a request by the Municipality for roadway construction, usually as a condition of subdivision approval.

In these matters the C.R.P.C. would append its approval with conditions specifying road construction and where these matters were appealed it was not the judgements of the Municipality that were challenged but the authority of the Commission to enforce the conditions.

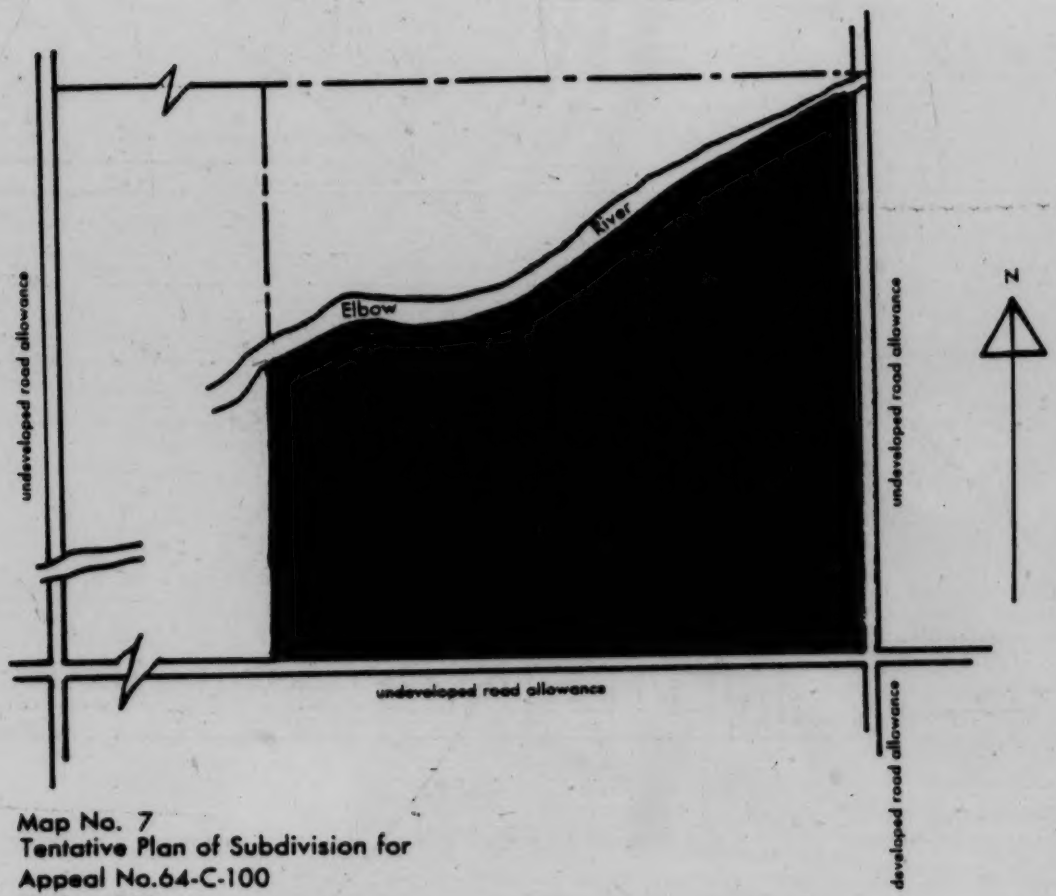
In Alberta Planning Board case 64-C-54, a landowner proposed to subdivide a 40-acre parcel into two 20-acre parcels for country residential use. The parcels met the criteria of the Subdivision and Transfer Regulation, as well as those of the preliminary regional plan and the municipal district. The subdivision proposal was approved on condition that the landowner construct roads along two sides of his parcels and provide access to the unsubdivided balance of the quarter-section. It was the last detail that the landowner disputed and lodged an appeal over, claiming that it would involve a great deal of hardship. While only about one-half mile of road would have to be constructed, it

would have to pass over a waterway twice and at each location a $10,000 bridge would be required. In addition, the road building would require grading and clearing that would cost another $10,000. The owner further said that adequate access to the unsubdivided portion of the quarter-section could be gained through another route.

The road-building condition was not authored by the C.R.P.C.. It was attached to the subdivision approval by the municipal district so that it might be relieved of future road-building demands. The municipal district was aware of the potential difficulties faced by the landowner, yet it was also aware that the land was adjacent to the Sarcee Indian Reservation and that if the Band so wished they could demand that the road be constructed, in which case the municipal district would be obliged to comply. Since the road would serve the landowner's property, the M.D. believed he should be liable for its construction.

At the appeal hearing it was learned that the estimated selling price for each of the parcels, for country residential use, was about $12,000. In consideration of that, the Board varied the decision of the C.R.P.C. and made the landowner liable only for the portions of the road that were to serve the two parcels. It also stipulated that future subdivisions would have to have their road accesses constructed prior to a subdivision request. In this instance the Board achieved a compromise whereby it supported the aims of the municipal district but also removed the element that was chiefly onerous to the landowner. Tacitly, as well, it approved the use of the subdivision approval procedure as a means of implementing local policies related to land development.

In general the road-building conditions were hotly contested, as the following appeal illustrates. In this case the proposed subdivision was to separate a 100-acre parcel lying south of the Elbow River (see map no.7); the balance of the parcel was to the north of the river. The prospective purchaser of the land proposed to use it for a country residence. He applied for subdivision and the request was approved by the commission subject to several conditions, including the construction of a road to serve the portions of the quarter-section lying beyond his parcel to the west. It was the latter point which was opposed and caused an appeal to be made to the Board. At the hearing the appellant stated that he believed that all of the Commission's requests had been met prior to the subdivision request. He also maintained that effective access to the neighbouring portions of the



Map No. 7
Tentative Plan of Subdivision for
Appeal No.64-C-100
Scale 1:800

quarter-section would be assured because the owner of that land owned other parcels immediately adjacent to the contentious one. Finally, the appellant argued that any road building would impose considerable hardship upon him, especially when he was not going to be in a position to profit from the road. The Board agreed and overruled the road-building condition until further subdivisions were requested.

The C.R.P.C. accepted the Board ruling but the Muncipal District was still rather concerned that it could be required to construct the road at a future time. It considered that the Board Order effectively allowed a parcel to exist without proper access. That was not a problem for the municipality as long as the land was undeveloped or if subdivision was requested prior to development. Road construction could be made conditional to any subdivision approval. What chiefly concerned the Municipal District was that if development was undertaken without a request for subdivision, it could then be faced with construction. The M.D. therefore requested the C.R.P.C. go back to the Board for an order clarifying the Municipal District's obligations. The board was asked to "amend its Order and provide the condition that [the original landowner] shall enter into an agreement with the Municipal District...as to his acceptance of obligation to construct the road in question should he require it for any purpose"(Alberta Planning Board file 64-C-100). The C.R.P.C., however, was in a difficult position:

> This type of referral back to the Provincial Planning Board is bothersome, not only to the Board but also to the private citizens concerned, the Municipal District, and of course the planning commission. It is wondered whether some procedure can be worked out to ensure that conditions of this type, which would normally be included in local approval, if approval were granted, might be brought to the Board's attention for inclusion in a Board Order. This might be difficult to achieve, but at least there should be some provision made in a Board Order indicating to a successful appellant that there might be local requirements which are not contained in the general approval given by the Board in its Order. If this were done it would at least provide against an inevitable feeling by the appellant that the local authority is asking the Board [to]

> change its decisions and throw in a lot of conditions which the appellant may feel by this time the local authority is not entitled to" (Alberta Planning Board file, 64-C-100).

The last statement was underscored by a new Board Order imposing the responsibility for any future road construction upon the original landowner and not the Municipal District. That was followed very shortly by a third Board Order which extinguished the previous Orders. The original landowner had challenged the second Board Order before the Supreme Court of Alberta, and the Court had ruled that the Board had exceeded its authority. As a result of the second Board Order the original landowner failed entirely to cooperate with the Commission or with the buyer. Particular aspects of the approval were still to be worked out and the subdivision could not be finalized until they were. The buyer, at that point, took the original owner to court in an effort to conveyance the land title. Apart from other points, the Chief Justice of Alberta instructed the Southern Alberta Land Registrar to issue a separate title for the 100 acres.That created the subdivision without adherence to any statutory planning provisions. The C.R.P.C. made no attempt to have the decision vacated but it stressed to the Attorney-General's Department that in any case where the planning statutes were liable to abrogation the affected planning authorities should, at least, be notified.

This case perhaps more than any thus far, illustrated the potentially awkward relationships among the various agencies involved with planning. The Municipality was seeking to limit its financial liability through subdivision controls and the Board, through a lack of understanding or oversight, failed to provide support. The Commission's appeal to the Board to recognize that its Orders did not specify the full range of local conditions appeared very straightforward, but at what point were the local conditions to be subject to higher scrutiny or variance? The court challenges were not particularly against any of the conditions but against the methods employed to make them binding. The judicial system compounded the difficulties by not requesting the representation of any planning authorities at either of the Supreme Court appeals. Clearly the people involved were not guarding the public interest. Where those interests were stated they were put forward in an ineffective manner. Above all else, the case illustrates the need for all involved parties to coordinate their actions.

As experience with the locally imposed conditions was gained there did seem to be an increase of coordination, of sorts. More appeals went to the Board for final adjudication. In one particular instance involving a road-building condition, this seemed quite trivial. A proposal to subdivide a 40-acre parcel into two 20-acre parcels was approved on condition that the landowner surveyed and dedicated a 66-foot wide roadway. The Subdivision and Transfer Regulation required the survey and dedication in the circumstances, but the landowner claimed he would be made exclusively responsible for a roadway which would serve neighbouring properties and that that was unfair. In response, the Board tabled the appeal to allow the landowner to negotiate with an adjacent landowner about sharing the roadway dedication. The negotiations were successful and the subdivision was approved. Since the major issue in the case was small and not particularly contentious, it must be wondered why the dispute could not have been handled without an appeal. This type of appeal fosters the suspicion that the Commission may have considered it easier to have such cases dealt with by the Board.

5.4.2 Subdivision proposals approved subject to Department ofHighways limitations and provisions

The extent to which the Department of Highways altered subdivision requests was quite unexpected. Its conditions appended to subdivision approvals constituted the largest proportion of appeals in this period. It would also seem that the plans of the Department were not well known to other public agencies, and so were poorly integrated with other land use plans.

An example of the dichotomy between the commission's view of acceptable land use and the Department's view concerned a strip of land in the Springbank area, immediately west of Calgary. A landowner (see map no.5) attempted to have a quarter-section subdivided into highway commercial lots along the Trans-Canada Highway, with country residential lots on the balance of the land. Subdivision proposals for the land dated back to 1959 and included 6 different land uses. Two previous appeals to the Board had been denied as they contained breaches of local and provincial development conditions. Nonetheless, the landowner persisted. Late in 1966 he submitted a request for 8 highway commercial lots adjacent to the highway. The C.R.P.C. refused the application

because the lots were smaller than required by the preliminary regional plan and access problems were anticipated. An appeal was also unsuccessful, but the Board Order noted the landowner's extreme difficulty in obtaining subdivision approval. In an unprecedented act, the Board specified the nature of a subdivision it would be prepared to approve. It advised the landowner to request that the entire parcel be subdivided into 20-acre parcels for country residential use, the parcels to be reached by a road allowance without access to the highway. Highway commercial lots, it said, could be considered later, after the Department of Highways had finalized its access plans for the area.

The role of the Department of Highways in this and other subdivision appeals was decisive. In this case the Department had declared a virtual halt to subdivision activity, but it was left to the C.R.P.C. to implement the ban. The Board also seemed unwilling to challenge the Department's expectations, although it had ample opportunity to do so. Yet it was prepared to grant subdivision if the matter of highway access could be avoided, and in telling the landowner what it would accept, it effectively circumvented the C.R.P.C.'s authority.

Conditions of road access and construction are issues which can be identified with the public interest with comparative ease; hence, they are easily promoted. Case 66-C-35 began when a landowner requested subdivision approval for two 20-acre parcels fronting onto highway 2A. Six 20-acre subdivisions had previously been approved on the quarter-section but the C.R.P.C. requested the comments of the Department of Highways. The Department replied, "These 20 acre parcels are a particular problem on this portion of the highway where we will be required to establish freeway standards in the very near future. Even with the provision of a service road, they create a demand for direct access onto the highway which is very difficult at times to refuse. We are in general disagreement with the establishment of 20 acre parcels along this section of highway, our primary argument being that they are not agricultural parcels within the intent of the Subdivision and Transfer Regulations and that the actual intent is to establish residential parcels"(Alberta Planning Board file 66-C-35).

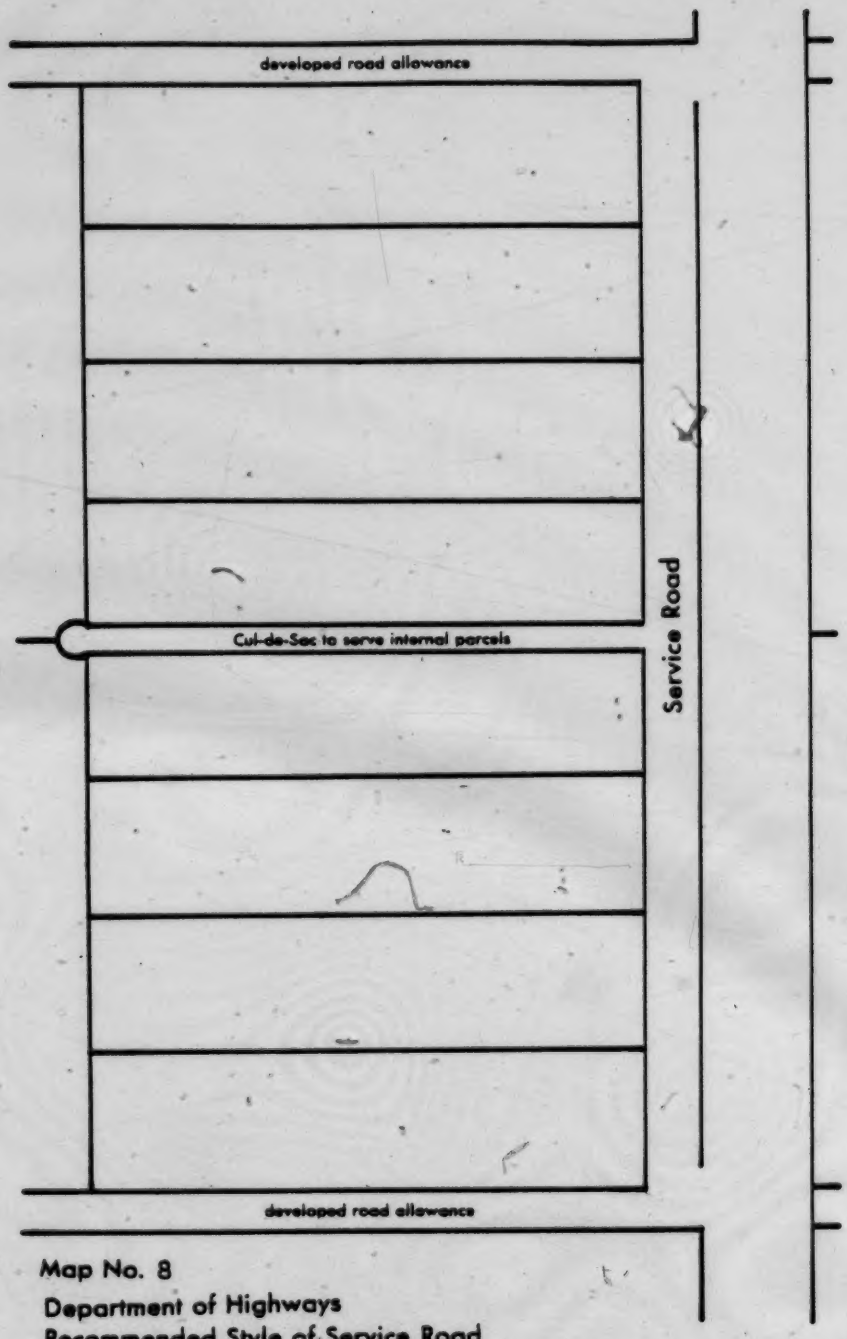
The C.R.P.C. made no response to the comment but it did solicit from the landowner a detailed plan of subdivision for the entire quarter-section. The landowner claimed that he had no intention of requesting more subdivisions and refused to furnish a

plan. The commission therefore refused his subdivision request, claiming access problems. At the subsequent appeal hearing the Department of Highways furnished a plan of recommended access for the group of subdivisions (see map no.8), including a service road and two intersections with highway 2A. The plan also showed a road running into the centre of the quarter-section to supply access to the interior should there be adjacent subdivision. The Department's intent was to limit the number of accesses and eliminate road allowance intersections with the highway. The Board embraced the Department's plan and made it conditional to the approval of the subdivision request.

While this case was routine it shows the faith placed in the Department of Highways by the commission and the Board where roadway planning was concerned. Rather less faith seems to have been put in the Department's estimation of the 20-acre parcels with respect to the Subdivision and Transfer Regulation. It is important to note, however, that lack of attention, by both the Commission and the Board, to the end use of the small parcels was causing concern.

A rather similar appeal involved the creation of a 27.5-acre subdivision which was refused by the commission because its planned access to a highway was considered dangerous. The landowner appealed that decision and, at the Board hearing, said he would move the access to a more suitable location if that was necessary for the subdivision approval. Then, however, the Department of Highways announced that it had dropped its objections to the access as originally planned. Accordingly the appeal was allowed. The point to stress here was that the Commission made its decision on grounds that were thought to be important to the Department of Highways, only to lose the Department's support when the matter was put to the test. This suggests that communications between the Department and the Commission were not particularly good.

In another example of an appeal where lack of communication was a factor, a landowner proposed to subdivide a 60-acre parcel from a quarter-section for country residential and grazing use. The request was conditionally approved by the Commission. The conditions concerned the deferred provision of reserves and the widening to 100 feet of a service road adjacent to the subdivision. Both conditions were appealed to the Board. At the appeal it was learned that the road widening condition was authored by the Department of Highways. The landowner questioned the need for the road widening.



Map No. 8
Department of Highways
Recommended Style of Service Road
Access to Rural Residential Subdivisions

explaining that at each end the road would narrow again to 66 feet. The Commission argued that it had no latitude in demanding the widening. The Subdivision and Transfer Regulation and the Department of Highways both specified the condition. That point was acknowledged by the Board but it decided to relieve the landowner of the immediate road-widening construction as long as he dedicated the necessary right-of-way. The decision was not contrary to the Subdivision and Transfer Regulation or to the future needs of the Department of Highways, but it was a compromise that altered the Commission's role in the service of the Department of Highways' goals.

For the appellants involved in subdivision disputes the Department of Higways' conditions were virtually unalterable. In another appeal a proposal was made for the subdivision of a quarter-section into two 80-acre parcels to be subsequently subdivided into 20-acre parcels for country residential use. The quarter-section was bordered on one side by the Trans-Canada Highway and the C.R.P.C. specified as a condition of approval that land be dedicated for a 100 foot service road. That condition was appealed and at the hearing it was found that the Department of Highways required the road dedication as there was to be no direct access to any of the parcels from the highway. In addition the Department said that future roadway improvements also prompted the requirement. Accordingly, the Board denied the appeal.

It can be seen that the Board reacted less generously to appeals against Department of Highways' conditions than to any other group of appeals. In case 70-C-11 a landowner proposed to subdivide from about 152 acres, two 20-acre parcels for country residential use. The Rocky View municipal planning commission recommended approval of the subdivision, subject to several conditions. The C.R.P.C. accepted the recommendations and approved the subdivision with the additional condition that a 125-foot wide strip at the front of the quarter-section be surveyed and dedicated for road widening and service road purposes. All existing access points with the adjacent highway were also to be removed at the landowner's expense. He was to negotiate with the Department of Highways regarding the highway widening before he could register his subdivision.

The landowner appealed all the roadway related conditions. The Board decision, however, left them all intact, except for the one requiring the removal of the access points

within the highway. On this point, the Board observed that, "under the Public Highways Development Act the Department of Highways and Transport can remove any existing accesses onto the Trans-Canada Highway"(Alberta Planning Board file 70-C-11). In short, the Board was in agreement once again with Department of Highways' criteria, except to the extent of making an individual remove accesses when there was no immediate need to do so. Still, this case reveals, better than any previously described, the extent to which subdivision control was used to effect various other land-related policies of the provincial government.

The use of subdivision control to advance related land use policies led to appeals that posed awkward questions about the entire issue of variance. In case 69-C-118, it was proposed that a landowner subdivide, from a half section, about 51 acres for a mobile home park. The land was situated immediately west of the City of Calgary on the Trans-Canada Highway. The Municipal District had recommended subdivision approval with conditions which the Commission took into account when they, too, gave conditional approval to the subdivision. The conditions were that the developer be responsible for construction of roads to municipal standards, the deferral of public reserves by covenant, and the realignment of the parcel boundaries so as to prevent any development within 1000 feet of the Trans-Canada Highway. Additionally, there was to be no direct access from the highway to the development. It was the condition requiring the realignment of the parcel boundaries that was appealed to the Board.

Through the appeal hearing it was learned that the landowner had planned to develop a nine-hole golf course between the trailer court and the highway. Not being allowed to develop within 1000 feet of the highway effectively ruled out the golf course. The Board noted that the Public Highways Development Act governed development within 1000 feet of a numbered highway and that even if it approved the subdivision the landowner had no assurance the Department of Highways would issue a development permit. The fact that the Board could have ruled in favour of the appellant but that would not have guaranteed him any right to develop his land, posed an interesting question. Did the Board really have final and binding planning authority? Clearly, in this case, it did not. A further question was who or what body was designated to grant variance from the provisions of the Public Highways Development Act.

The relationship between the Board and the Department of Highways was further complicated in that in certain areas, the Board could and did overrule the Departments' wishes. In one representative case the landowner operated a filling station and had his home on a 3.56 acre parcel immediately east of the corporate limits of the City of Calgary. The landowner wished to subdivide his parcel so that his home and his business could be located on separate titles. This would save his home from being seized should his business become insolvent. The Municipal District was not opposed to the subdivision request since their development control bylaw showed the gas station site to be 'highway commercial' and the home site to be 'country residential' land use. The City of Calgary, however, opposed the subdivision, as did the Department of Highways. The latter claimed it had long-range plans indicating that a proposed ring road could possibly deny access to both parcels in the future. For that reason, and because the development was contrary to Subdivision and Transfer Regulation concerning the location of commercial facilities adjacent to highways, the C.R.P.C. refused the subdivision request.

Of particular importance to this case was the fact that no construction was to be undertaken. All that was asked for was the legal reorganization of an existing development. The Board ascertained that the filling station had been built more than thirty years before the subdivision application and that the municipal district had no complaints regarding the development or its access. Access, it was maintained, was guaranteed by existing road allowances. The only unresolved point, then, was the Department of Highways' contention that all access to the property could eventually be jeopardized. The Board was little concerned about that eventuality, since all parcels have to have legal access and any future road development would have to account for the parcel. In this instance the Board did not think the needs of the Department of Highways were sufficiently great to deny the appeal. In addition, there was little point to not approving a subdivision that was, for all intents, an accomplished fact.

5.4.3 Joint ownership subdivision proposal appeals

The joint ownership of buildings, land and businesses is a very old practice. Yet the joint ownership of land in certain types of rural residential developments posed considerable difficulties for the regional planning commission. Indeed, many subdivision

proposals that involved joint ownership eventually went before the Board for adjudication. In the first case of this type a landowner proposed to create 16 2-acre lots for country residential use on 380 acres of land. Each lot was to be privately owned, while the balance of the land was owned by each lot holder in the form of an undivided interest. The development posed several fairly major problems for the Commission. The creation of 16 lots at one time was contrary to the preliminary regional plan and access by way of an easement to each parcel was not envisaged in the regional plan. In particular, the Commission did not have the authority to limit future subdivision of the residual lands or the authority to draft development agreements on behalf of the municipal district.

In an effort to clarify its powers the C.R.P.C. subdivision committee outlined 12 recommendations for the development. They specified that the 16 parcels were to represent the total subdivision of the land and that road access was to be by right-of-way to each lot, with the costs of all road construction being borne by the lot owners. In this case the residual lands were to be considered agricultural and registered under one title; the 16 undivided interests could then be lodged against the title. In addition, there was to be a master agreement specifying the ownership of interests in the residual parcel (which were to be limited to only those with lots) and a ' master development agreement' which was to specify that any future changes to the land or status of development were to conform with plans, bylaws and regulations authored by the Commission and the Municipal District. The committee's last recommendation was that the matter be referred to the Board for its decision. The subdivision request was then refused and the way opened for the Board to review it.

At the appeal the Board ascertained that the proposed subdivision was not on good agricultural land and that no dwellings were to be located on a flood plain. It also found that the Municipal District of Rocky View was not opposed to the development as long as it was not forced to assume liability for any costs incurred by the development. On the basis of that information the Board gave conditional approval to the proposal. The conditions appended to the approval were essentially those authored by the subdivision committee.

The only reason for the appeal was that the Commission was not sure of its legal authority where development agreements were concerned. Its legal position would have been further undermined if the Commission had approved the proposal when it was

contrary to the letter of the two-parcel rule, if not the spirit. In this instance the Board Order was necessary to put authority behind the development agreements between the developer and the Municipality, and to shield the Commission from the negative effects of contravening one of its own regulations.

The second joint-ownership development to come before the Board from the Municipal District of Rocky View entailed a proposal to create 9 lots on a half-section of land. Like the previous joint-ownership application it was unopposed by the Municipality as long as suitable development agreements could be assured. The Board was furnished with detailed recommendations from the Municipality and the Commission in the form of the twelve points mentioned in the previous appeal. In the deposition of the case the approval was based on the points previously drafted by the subdivision committee. The point to be stressed here is that the three levels of planning authority could function cooperatively to one another's satisfaction.

5.4.4 Controversy concerning the C.R.P.C. approval of outline plans

The final cause of appeals not relating to preliminary regional plan provisions concerned the C.R.P.C. and its approval of outline plans. In 1971 the Commission began to demand outline plans for many subdivisions. The advantages to the Commission of this action was that it could evaluate not only the requested subdivision but the future development intentions of the landowner. In addition, if the outline plan failed to account for Commission policies it could be returned for alteration. The Municipality and the Board were entirely uninvolved in the review. The Commission reasoned that there was no right to appeal a refusal of an outline plan since it was not a subdivision request. The net effect was that landowners and developers had to draft outline plans acceptable to the Commission or pass into a kind of planning 'limbo' where there was no opportunity for a hearing.

The situation was one that did not remain unchallenged. Landowners and developers were concerned for obvious reasons but the Board, too, was concerned that they were being treated unfairly, if their right to appeal was denied. The situation also gave the C.R.P.C. the opportunity to demand very much what it wished where outline plans were concerned. The matter reached its climax in May 1971 when the Board wrote to the

Director of Civil Law for the Attorney General's Department, in the following vein:

> "The Board recently heard three appeals in Calgary in which the approving authority had refused the approval of an outline plan... The approving authority required the applicant to submit an outline plan which was to show the future planned subdivision within the subject quarter-section. The outline plan, however, was refused in each instance because none of the applicants had provided for public reserves. The Board is concerned that there may not be a proper appeal from the refusal of an outline plan. However, it may be concluded, because the outline plan was submitted as part of the application for subdivision, that, in effect, the subdivision had been refused and therefore the applicants have a proper appeal to this Board"(Alberta Planning Board file 71-C-59).

The Director of Civil Law agreed that the right of appeal did exist for cases where outline plans were refused. That decision effectively opened the way for appeals of that nature on a routine basis if necessary. At one such appeal the Board noted that the municipal district had recommended approval of the subdivision subject to certain conditions but that the Commission refused the request because there had been no provision of public reserve lands. In the decision to that appeal the Board overruled the C.R.P.C. and approved the subdivision without any dedication of public reserve, it was deferred by covenant. The approval, however, carried with it several municipally authored conditions. Had the C.R.P.C. successfully contested its position that the outline plans were not part of the subdivision approval process and, thus, not subject to review by the Board,the changes within the planning system would have been considerable. Not the least of these would have restricted the ability of municipal and provincial authorities to append the Commission's subdivision approvals with their own land-use oriented requests.

5.5 Interim Conclusions

When taken together the appeal files illustrate the breadth and complexity of the planning system. They also detail the large numbers of regulations and other control devices that have been created to manage development and changes in the status of land use. The appeal files for the period 1963-71 grew out of individual disagreement with the way in which the Commission was pursuing its planning goals. The right to appeal planning decisions is a cornerstone of the Alberta planning system but in addition to dispensing variance the Planning Board had the power to continually affect the success or failure of policy initiatives at the regional level. In that sense the Board provided guidance as well as variance.

In drafting its regional plan the Calgary Regional Planning Commission had several definite ends in view. Perhaps most basically, it was determined to maintain a clear differentiation between urban areas (principally the City of Calgary) and rural areas. In a sense all of the C.R.P.C.'s requirements regarding land subdivision acknowledged that goal. The net effect was that the Commission wished to keep the numbers and densities of rural subdivision low. In addition, the Commission considered that where subdivision was undertaken it should be complementary to the rural environment and economy.

Regulations such as the two-parcel rule and the minimum parcel size rule were clearly designed to limit the amount of rural subdivision. The implementation of a system of land use classes and the public reserve policy, on the other hand, were designed to ensure that subdivision and development would be compatible with the rural land uses around them. In effect the C.R.P.C. was trying to coordinate the subdivision and development control processes in spite of the artificial separation of the two activities by the Planning Act.

For the most part the Commission's policy instruments were well received by the Board. Many of the appeal decisions involved compromise. Indeed, in some instances the Board upheld appeals but effectively strengthened the control system by examining the ability of the proposed subdivision to respect the spirit and intent of the plan. In these circumstances the Board also stressed that the variance was in response to special circumstances. In short, the Board was acting in the accepted way for a variance granting agency to function.

The number of appeals that were heard by the Board for infractions of policies or regulations that were not embodied in the preliminary regional plan was proportionately larger than for the former group. The Municipal District of Rocky View, for instance, was on a solid footing when it repeatedly requested the Commission to append its subdivision approvals with municipal demands that those wishing to subdivide land and develop it furnish improvements such as roads at their own expense. The issue for the Municipal District was that it did not want to find itself with costly obligations as a result of land subdivision, a point which it identified with the public interest. This fact was recognized by the Board as it placed liability on landowners for improvements that would benefit them directly. In such matters the Board's adjudication amounted to how much liability an individual landowner could reasonably be expected to assume.

In a similar sense the Board seemed to work on the premise that the ends of the developers were subordinate to the larger public will as it was represented by the Department of Highways. The Department was assumed to have no self-serving intentions. Its technical determinations were for the most part unchallenged by the Board. It must also be noted that any challenge the Board chose to mount had to be considered very carefully, as the Department was guided by codes of legislation other than the Planning Act. The Board therefore ran the risk, in particular circumstances, of causing embarrassment to itself and, perhaps, to the government. The Board's reluctance to run that risk is illustrated through such actions as outlining to an unsuccessful subdivision applicant a subdivision proposal that would not be opposed by the Department or the Board.

The matter of joint ownership subdivision appeals highlights the Board's position as the senior authority where planning outside cities was concerned. The Board was able to put the force of law behind the development agreements for these types of subdivisions when there had been no anticipation of such a need in the planning statute. And while that authority was seen in a beneficial light in the case of joint ownership subdivisions it was shown to be an effective tool for controlling the aspirations of the Municipal District of Rocky View. The Board's poor reception of the municipally drafted 40-acre minimum parcel size regulation effectively put that issue to rest.

More generally, the appeals show that the three levels of planning did not usually function cohesively. This is hardly to be wondered at, since each body had different and

sometimes conflicting responsibilities. The Board's stewardship of the Planning Act was tempered by its duty to protect individuals from undue hardship. The Commission was bound to chart a contemporary and future course for development through the procedures of the Act. In addition, the Municipal District seemed relatively unconcerned with most planning matters so long as its related financial liability was limited. With the Commission concerned for long range goals and the M.D. concerned with avoiding short term expense, the two nominally united land use control mechanisms failed to support one another which called, increasingly for the Board's intervention in local matters. The situation was not one to inspire confidence in the system of planning controls.

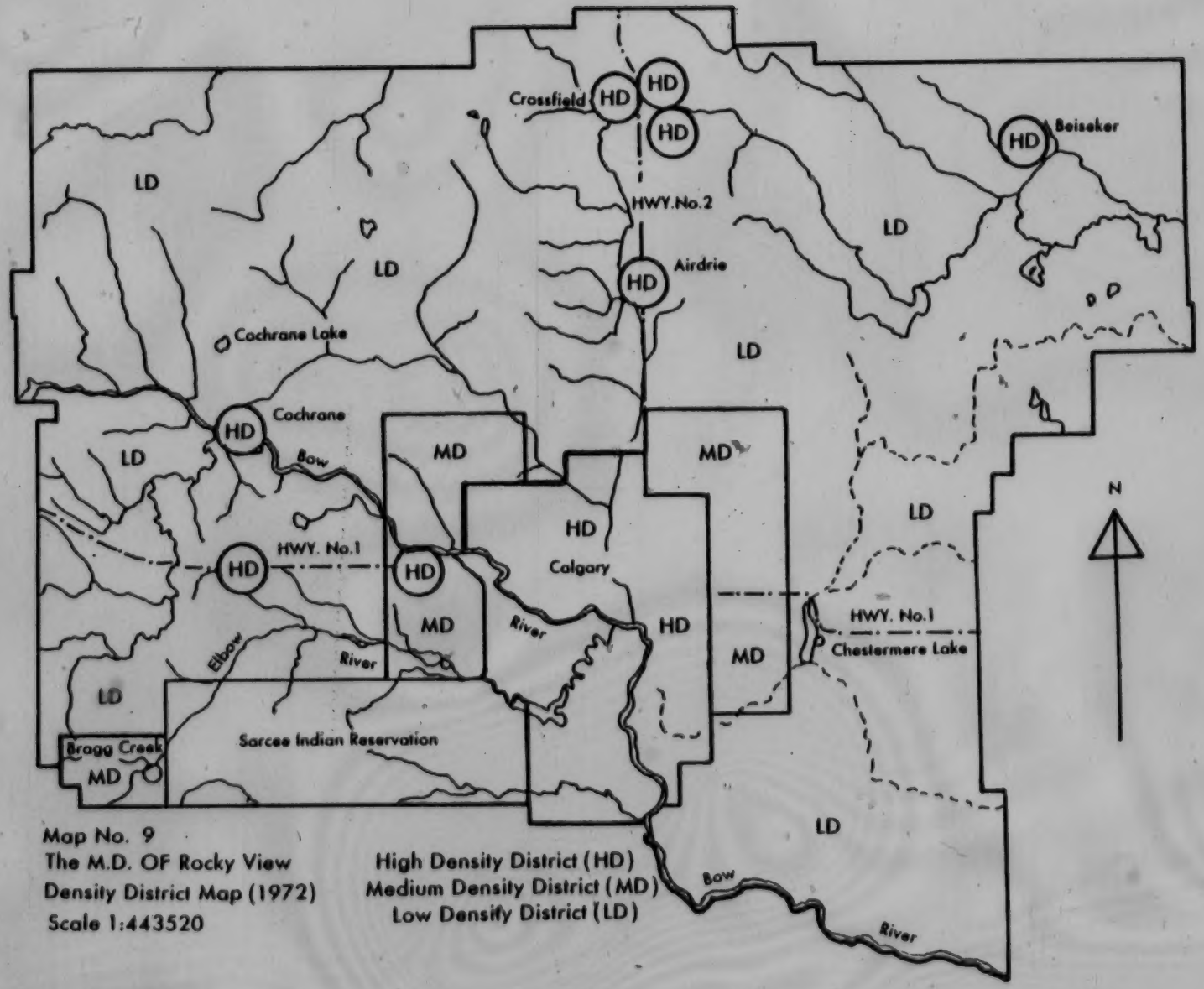
6. MORE ADVICE AND DISSENT: THE SECOND PRELIMINARY REGIONAL PLAN AND SUBDIVISION APPEALS

6.1 The Objectives of the Second Preliminary Regional Plan

In many respects the second preliminary regional plan was similar to its predecessor, but in some key areas it differed notably. The plan was still preliminary in that the Commission still did not know enough about local land use demands and projected forms of growth to commit itself to a firm regional strategy. The new plan was therefore conceived as an intermediate step, but its preparation did occasion a review of planning objectives and the methods of plan implementation. In general, the policies of the first plan were found to be still applicable and were embodied in the new plan. The methods of implementing the policies, however, were found wanting and an extensive reorganization was undertaken. In effect, the Commission endeavoured to make its controls more comprehensive and more obviously integrated into a single system.

The plan was again bound by a series of broad objectives, chief among which was a desire to achieve greater cooperation between the Commission and its member municipalities. Through cooperation, it was believed, would come a better understanding of the wider land use concerns of the region, as well as the commitment to deal with them. Cooperation was also particularly needed since the Commission intended to establish population and subdivision densities which, in order to be effective, needed full municipal support.

The density regulations were prompted by the Commission's fear that the city of Calgary was threatened by creeping subdivision beyond its boundary which, when future urban expansion was undertaken, would cause all manner of difficulties. To facilitate its policies the Commission wanted to establish a system of districts that would be recognized in the member municipalities' development control or zoning bylaws. To that end the plan was appended by a map showing the plan area divided into low, medium and high density districts (see map no.9). The city of Calgary and the rural towns and villages were all designated high density districts and the majority of the land on the fringes of the city was envisaged as allowing a moderate level of subdivision and population. The balance



Map No. 9
The M.D. OF Rocky View
Density District Map (1972)
Scale 1:443520

High Density District (HD)
Medium Density District (MD)
Low Density District (LD)

of the land in the plan area was considered suitable for a low density of population and subdivision. Although generalized, the map was sufficient to illustrate to individuals and the member municipalities that subdivision and development in large portions of the plan area was to be restricted.

The Commission's prime consideration in the determination of which areas were included within the three categories was that good arable land not be subdivided. Obviously, the urban areas had to be considered in relation to the demand for new land for urban uses but the clear intent of the density regulations was that they restrict subdivision, particularly within agricultural areas. They were, for the most part, included in the low density district which had a standard parcel density of four parcels per quarter-section with eight parcels the maximum allowable number. Even though that represented a potentially high amount of subdivision the Commission believed that the average density for agricultural areas would be kept well below the standard. The medium density district was envisaged as one where a controlled transition to urban land uses would be allowed over the long term. The standard parcel density was the same as that for low density districts but the maximum parcel number could be as high as sixteen. The larger number of parcels per quarter-section also meant that small parcels could be created which, it was hoped, would help reduce the demand for small holdings in agricultural areas. The high density districts had no stated standard or maximum density as their primary purpose was to provide for development to urban densities within urban municipalities, townsite subdivisions, resort cottage subdivisions and highway commercial subdivisions. In short, through the density regulations the Commission was attempting to take a leadership role with respect to the location of both subdivision and development. It wanted to guide rather than to react to urbanization pressures.

As another part of that broad objective the Commission drafted a broad array of land use provisions which, amongst other items, called for the drafting and implementation of zoning or development control bylaws and formed a guide to the allowable land uses for each of the land use categories authored by the Commission. The provisions not only gave body to the plan policies but formed an added measure of control over subdivision and subsequent development. Their impacts were wide since the Commission's member municipalities could not allow development that was in opposition to the spirit and intent of

the plan. Similarly, by statute, the Board was precluded from making appeal decisions that were against the plan. The Commission must have been aware that such an extension of control would be contentious.

About a year after the preliminary regional plan was adopted in January 1972, the Municipal District of Rocky View adopted a municipal general plan which included proposals relating to development control, the provision of public reserves, and the extension of services within the M.D.. A zoning map was also included. The general plan was seen as an extension of the preliminary regional plan. In general terms, it was intended to transpose the overarching regional policies to a more specific level, in keeping with the circumstances and characteristics of the municipality. The plan also allowed the council to establish its own policies respecting the pattern of private and public development within its area of jurisdiction.

Within a general policy section, the general plan recognized the probability that some land within the M.D. would be required for urban expansion in the future. To ensure that this expansion would not be jeopardized by sprawl on the urban–rural fringe, the plan specified that a two mile wide strip of land contiguous with the Calgary city boundary be zoned for a minimum parcel size of 20 acres. The District's rural communities were also to be encouraged to attract low density industrial development and additional urban development. Both of these points were in concord with the objectives of the preliminary regional plan.

Where small parcel development was concerned, the general plan followed the Commission's guidelines. While it was realized that the demand for small parcels was quite great, their unrestricted expansion was considered not to be in the best interests of the municipality. The council therefore proposed to limit small parcel development to 'rural residential zones and rural farming zones'. Small holdings of all classes were not to interfere with extensive agricultural pursuits and the boundaries of the small holding zones were to be determined by the development control bylaw. The sizes of the parcels and their densities within the zones were regulated by the preliminary regional plan.

The body of general policies was augmented by a listing of more specific control measures, setting a range of minimum conditions or regulations that had to be met for development to be approved. These were incorporated in the zoning bylaw.

The standards were most restrictive for general agricultural land uses. These were the most prevalent in the district and many of the regulations were designed to protect the economic and physical attributes of the agricultural industry. The restrictions became progressively more detailed for land use classes that allowed a greater variety of uses and higher population and parcel densities. Predictably, the Municipal District was concerned for its financial liability with respect to new subdivision and development. Thus, it was clearly stated that the Municipality would assume no responsibility for the provision of water supplies to any development, or provide for the removal of waste of any kind. Similarly , the Municipality assumed no responsibility or liability for damage to property resulting from flooding.

The future land use map appended to the plan provided a practical demonstration of the local land use objectives. For example, large scale recreational areas were proposed for certain reaches of the Bow and Elbow Rivers, as well as portions of the Nose Creek area. Blocks of land for industrial use were set aside adjacent to the north-east and south-east boundaries of the city of Calgary. In addition, many of the District's towns and villages were designated as urban growth centres. Zones for small farms, country estates and small holdings were also created. The land use map was seen as an important tool to illustrate the M.D.'s general policy aims. The council of the Municipal District had a vested interest in seeing that the plan was well understood since it was adopted as a bylaw and as such had legal force.

6.2 The Relationship Between the Preliminary Regional Plan and the Municipal District of Rocky View s General Plan

The Municipal District of Rocky View's general plan was subordinate to the Calgary Regional Planning Commission's preliminary regional plan. As such, the general plan was intended to provide for the Municipality, a practical method of relating the planning policies of more senior planning authorities to the particular local circumstance. The task was a considerable one since the alternative growth strategies for the city of Calgary and the region had not been completed and the siting and form of future expansion was entirely undecided. The goal of the preliminary regional plan in light of this, was to 'hold the line' on expansion and attempt to contain it until urban expansion could be managed more

effectively.

The population and density provisions of the preliminary regional plan were believed to offer a means of restricting subdivision, thereby making urban expansion into the region a more difficult matter to achieve. However, previous experience had indicated that the restriction of subdivision was unsatisfactory in the absence of effective municipal control over development, a point which explains the Commission's interest in influencing its member's general plans and development control and zoning bylaws. For its part, the M.D. of Rocky View's general plan would seem to indicate that the Commission's intervention was not unwelcome. The Municipality, after all, had stated that unrestricted small parcel development was not in the best interests of the Municipality.

When viewed together, the preliminary regional plan and the M.D. of Rocky View's general plan present a coordinated approach to the problem of urban containment, though each went beyond this issue to embrace a host of other planning issues. For the most part, these other issues were not contentious. The appeal files will be used to demonstrate policies attracted disagreement, and whether the intentions of cooperative regulation of subdivision and development survived exposure to real circumstances and the Alberta Planning Board's intervention.

6.3 The Division of the Appeals

While the preliminary regional plan and the general plan provided more detailed descriptions of land use policies and control procedures, the basic ends to which those policies were directed remained unchanged from the first preliminary regional plan. Characteristically, then, the appeals arising from disputes with the second preliminary regional plan were not very different from those dealt with previously. The adoption of the general municipal plan also did not alter the fact that the M.D. and the Commission had markedly different expectations of the benefits the planning process was to provide. At the root of these differing expectations, still, was the variance in the time frame within which the respective authorities worked.

The appeals studied here cover the period 1972-78 and may be divided into two major groups: those which the C.R.P.C. considered were opposed to their long-range goals, and those appeals to which the Municipal District and provincial agencies objected.

The division of the appeals in this manner is designed to illustrate the functional relationship between the Commission's subdivision controls and the M.D.'s development controls, with the Alberta Planning Board playing its pivotal role between and over both agencies.

6.4 Appeals Arising as a Result of the Preliminary Regional Plan

In Chapter 5, the appeals which arose as a result of the preliminary regional plan were divided into four sub-groups. Since the second preliminary regional plan did not alter its basic policies that division remains fully applicable. The second plan's implementation procedures, however, were stated with more precision in particular areas. Thus the group of appeals labelled 'subdivision proposals not meeting land use guidelines' has been made more specific, and now includes appeals dealing with farmland conservation, farmstead isolation, prematurity of subdivision, subdivision in the vicinity of airports, and subdivisions considered to be contrary to orderly and economical development. Otherwise the appeals are grouped into their former sub-groups: the two-parcel rule, minimum parcel size regulation, and the provision of public reserves.

6.4.1 Subdivision proposals not meeting land use guidelines

Appeals against the agricultural land conservation guidelines

One of the Commission's most basic land use desires was that agricultural land should not be subdivided where it was capable of agricultural production. This objective was backed in a variety of ways, all of which were aimed at restricting subdivision. Subdivision was only to be allowed in areas specifically designated by the Municipality . In the Commission's view, the prevention of all subdivision was completely compatible with its broad goals of agricultural land conservation and orderly and economical development.

During the study period the policy of agricultural land conservation was used by the Commission to refuse 45 subdivision proposals. This was, by far, the most common reason for the refusal of subdivision requests. The Board backed the Commission's decisions in 31 appeal disputes, 12 subdivision requests were approved through the appeal process, and in two cases the Board ruled that it had insufficient jurisdiction to render a decision.

Of the 31 appeals rejected by the Board, 27 were opposed by the Municipal District of Rocky View as well as the Commission and while the major reason for refusal in all cases was farmland conservation (see appendix no. 1), a host of other reasons were furnished. These included topographical limitations, problems with road access, prematurity of subdivision and development, as well as the premature extension of subdivision into areas otherwise free of subdivided land. For the most part, the subdivision proposals were for parcels of 40 acres, though parcels as large as 80 acres and as small as 4 acres were also requested.

In ruling on the appeals the Board looked to the spirit and intent of the preliminary regional plan. The Board's interpretation of the agricultural land conservation policy was broad but it frequently cited the fragmentation of agricultural land by subdivision and the intrusion of subdivision as factors contributing to the denial of appeals. In addition, the Board viewed the subdivision proposals in two lights: those for parcels which would, in the words of the appellants, remain agricultural, and those which would be let to develop into small holdings and country residential holdings. When appeals were lodged and argued on the basis of compassionate circumstances there was no evidence that the Board was influenced to bend the plan's provisions. Overall, the Board seemed intent upon a rigorous examination of each appeal, regardless of peripheral circumstances. It would seem clear that the Board regarded the agricultural land conservation guidelines with favour and generally upheld them on appeal.

In one of the first appeals against the conservation policy (Alberta Planning Board file, 73-C-482), a landowner proposed to subdivide two 40-acre parcels from a quarter section. It was maintained that since the land capability was only fair and non-arable, the conservation argument could not reasonably be applied to it. For its part, the Commission argued that the productive capacity of the land was not the only criterion upon which the conservation policy relied. But in this case, the land was regarded as good pasture land and, hence, agriculturally productive. In reaching its decision the Board agreed with the Commission. The particular subdivision proposal, it was said, would result in the formation of uneconomical parcels which would, in turn, remove the land from agricultural production.

In several subsequent appeals for country residential/agricultural parcels similar decisons were rendered. One of the consequences was that residential end uses were no longer specified and the appellants increasingly began to specify 'agricultural pursuits' as the end use for subdivided parcels. The Municipality, Commission and Board were alert to this strategem, however, and began to scrutinize the proposals for their sincerity. Statements like the following – "Although the purpose of the subdivision is to create an 80–acre parcel which the appellant may farm jointly with his present land holdings, this Board is concerned with the creation of two parcels of 80 acres in size which would be the first intrusion on a good agricultural quarter and would represent partial fragmentation" (Alberta Planning Board file, 74–C–551)–began to appear alongside the denials. Even if a subdivision proposal specified an end use compatible with the local zoning, acceptance was not assured. In Alberta Planning Board case 74–C–528, an application was made to subdivide two 40–acre parcels from a quarter section. The subdivided parcels and the 80–acre residual parcel, it was said, were to be used for unspecified agricultural uses. But, although the land was zoned for 'general agriculture' the Board denied the appeal and stated that the appellant had to improve the productive capability of the land through subdivision to justify any such request. In the absence of this justification the proposal could not have merit.

Similarly, even where distinctly agricultural end uses were identified the planning agencies weighed the potential requirements of the use against the potential negative effects of creating new subdivisions. In one such instance (Alberta Planning Board file, 76–C–137), a landowner wished to subdivide his quarter–section into two 80–acre parcels. He proposed to operate a feed lot operation on one of the parcels whilst continuing to farm the other. The subdivision was requested to isolate the land on which the feed lot was to be located from the landowner's farmstead. Failing such a separation the landowner stood to lose his farmstead should the feed lot become insolvent. In denying the appeal the Board indicated that feed lots were poor uses for high quality agricultural land and would be better located on land of low agricultural quality.

Even appeals based on compassionate grounds did not escape rigorous scrutiny. In Alberta Planning Board cases 75–C–18 and 77–C–323, for example, none of the planning agencies was swayed. In the former matter, a landowner proposed to subdivide two

40-acre parcels for an unspecified agricultural use as well as to provide building sites for his son and daughter. In this instance the Board was unable to ascertain any particular hardship and in its ruling stated "that unless there are demonstrated compassionate circumstances such as evidence of hardship, the Board is opposed to the subdivision and fragmentation of good agricultural land". In the latter case, a landowner proposed to subdivide an 80-acre parcel into two 20-acre parcels, leaving a residual parcel of 40 acres. The two 20-acre parcels were to be used as country residential holdings. The landowner, it seemed, was unable to put the 'severely limited' land to any agricultural use, but the Board maintained that the landowner's inability to use the land did not then make it suitable for country residences. In denying the appeal the Board indicated that non-crop intensive agricultural pursuits could be supported by the land.

The 12 subdivision proposals approved after appeal to the Board showed several common attributes (see appendix 2). In eight cases it was demonstrated to the Board's satisfaction that bona fide agricultural pursuits were intended. In two other cases (Alberta Planning Board files, 75-C-140 and 76-C-124), subdivision of land was necessary for the division of property in divorce settlements. In both instances, however, the Board first ascertained that the parcels would remain in agricultural production. In another instance (Alberta Planning Board file, 76-C-376), a landowner requested permission to subdivide two 40-acre parcels from his quarter-section. The request was refused by the C.R.P.C. but, like the majority of these cases, was favoured by the Municipality. At the appeal the Board found that the land was of poor quality and had little agricultural potential of any kind. The Board therefore ruled that the subdivision would not adversely affect the Commission's policy. In the last of this sub-group of appeals (Alberta Planning Board file, 76-C-372), a landowner proposed to subdivide two 20-acre parcels from a 124-acre parcel. The parcels were to be used as rural holdings, a use which the Municipality did not object to since the land was zoned for 'small holdings'. The Commission believed that the subdivision would be contrary to its conservation policy but the Board ruled that since the zoning allowed small holdings and the land was highly suitable for country residential uses the appeal should be allowed. Of all the cases only 76-C-372 seemed to offer a severe challenge to the Commission's interpretation of its agricultural land conservation guidelines.

The remaining two subdivision proposals which were refused by the Commission were not ruled upon by the Board. It will be remembered that under the Planning Act, 1970, the Board was precluded by section 16(b) from making any decision that was contrary to a regional plan or preliminary regional plan. In both of these cases (Alberta Planning Board files, 76-C-261 and 76-C-330), the subdivision would have created a number of parcels greater than allowed under the density provisions of the preliminary regional plan. These appeals therefore fell outside the Board's jurisdiction.

Appeals against the farmstead isolation guidelines

Another facet of the agricultural land conservation policy was a provision whereby farmers who wished to retire (or otherwise stop farming) could isolate their farmsteads from the balance of their home quarters by subdividing a single small parcel upon which their farmstead was located. The rationale behind the provision was a belief that productive land could be kept in production, and in parcel sizes large enough to be economically viable, whilst allowing farmers to dispose of their land but not their homes and outbuildings. Similarly, the demand for small holdings generated by rural residents could be met to some extent through the farmstead isolation provisions.

The majority of the homestead isolation subdivision proposals were for land in areas zoned 'general agricultural' and the Commission was aware of the potential for farmstead isolation provisions to be used to create country residential parcels for resale. The Commission therefore specified that isolations would be considered only for quarter-sections that had otherwise not been subdivided. In addition, each request was scrutinized by both the Municipality and the Commission to ascertain its sincerity and ability to fulfill the spirit and intent of the preliminary regional plan.

During the study period the Board was asked to rule on nine farmstead isolation appeals, six of which it subsequently approved. In the first (Alberta Planning Board file, 76-C-154), a landowner proposed to separate a 4-acre parcel from a previously subdivided quarter-section. In most respects the proposal was acceptable but the fact that a 1-acre parcel had been subdivided prevented the Commission from granting subdivision approval. At the appeal the Board stated that it was satisfied that the proposal met the spirit and intent of the preliminary regional plan and that the Municipality could satisfactorily control development on each of the parcels. Accordingly, it allowed the

appeal.

A later farmstead isolation proposal (Alberta Planning Board file, 76-C-15), was opposed by the M.D. and the Commission who maintained that the proposal was actually for the creation of a country residential parcel on prime agricultural land. The landowner proposed to subdivide a 20-acre parcel from his quarter-section, but as he had made no attempt to move his outbuildings to the parcel the suspicions of the local planning agencies were aroused. During the appeal the landowner stated that his intention was to live on the farmstead parcel and that he had simply not moved the buildings but intended to do so once the matter was settled. The Board found that the proposal was a legitimate one to which it could give approval.

The Board's role in reviewing the proposals was roughly akin to the gathering of a third opinion, yet the Board had final powers of approval. In Alberta Planning Board case 77-C-437, both the Commission and the Municipality expressed reservations about the sincerity of a landowner's request to subdivide a 30-acre parcel from a 100-acre parcel. The local planning agencies believed the isolation provisions were being used to create a country residential parcel on prime agricultural land, which would have been contrary to the local bylaw, as well as being too large and too near the Trans-Canada Highway. At the appeal, however, the Board was satisfied that the landowner's intentions were genuine. The appeal was allowed but the Board specified some major alterations to the proposal. The parcel size was reduced to 15-acres and the dedication of a service road was also required. In addition, the landowner was to assume all costs for improvements to bring the parcel and its access to prevailing municipal standards.

In that instance the Board was able to work an equitable compromise, something which was not possible in the following three appeals, all of which were denied. The first illustrates the subjective nature of the judgements concerning this class of requests (Alberta Planning Board file, 76-C-201). The landowner proposed to create one 20-acre parcel on his unsubdivided quarter-section. The Municipal District of Rocky View recommended that the proposal be accepted as long as Municipal conditions respecting cash-in-lieu of reserve land and road right-of-way provisions were embodied in the subdivision approval. The Commission, however, believed the landowner intended to dispose of the parcel as a country residential holding. Based on comments at the appeal

hearing, the Board agreed with the Commission, stating that "the effect of this subdivision would be to create a country residential parcel on prime agricultural land". The principal point of interest, however, was that the Board Order did not specify the information on which the refusal was based.

Alberta Planning Board case 76-C-166 was quite similar in that a landowner requested a 10-acre subdivision to isolate his farmstead. Here, both the Municipality and the Commission opposed the proposal, though the Municipality had also taken the precaution of specifying a service road requirement. For the Commission's part the subdivision was described simply as 'bad planning', since the proposed parcel was directly adjacent to the No.2 Highway easement and the Commission was not assured that the proposal was for a bona fide farmstead isolation. At the appeal hearing the Board stated that it too was of the opinion that the parcel would fragment good arable land and was poorly planned. In denying the appeal, however, the Board left some doubt as to whether the parcel's poor planning or contravention of the farmstead isolation guidelines was chiefly at issue.

The Board's refusal of another farmstead isolation request (Alberta Planning Board file, 75-C-171) came about because the parcel lay within an area to be annexed to the City of Calgary. In the Board's judgement the land was destined for annexation and development, since the separation of the homestead from the quarter-section had little practical purpose. The appeal was therefore denied.

In another similar, but much larger appeal, the Board ruled on Alberta Planning Board files 75-C-170, 75-C-174, 75-C-175, 75-C-176 and 75-C-220. In each case the subdivision proposal was to take a 20-acre parcel from previously unsubdivided quarter-sections, except for one case where the desired parcel size was 40 acres. In each instance the Municipality had recommended approval subject to agreements regarding road widening, the payment of taxes, and the deferral of reserves by covenant.

The proposals were for six adjacent quarter-sections which the Commission considered were informally forged into a block to make them attractive for future urbanization. In view of this, the Commission questioned the sincerity of the several owners' contention that the balance of their quarter-sections would remain in agricultural production. The C.R.P.C. then refused all of the requests saying that they failed to respect

the farmstead isolation guidelines of the preliminary regional plan. At the appeal it was decided to treat the related cases as one large matter and the Board saw its obligation as being one of 'weighing the particular aspirations of each appellant against the larger public interest". The Board noted that the area was under study for future urban development but that the timing for the transition to urban land uses was unknown. The Board believed that the land would offer the greatest number of planning options if it remained unsubdivided. In upholding the Commission's decision to refuse the applications the Board stated that the public interest was best served by restricting the number of land titles.

Appeals against the orderly and economic development land use guidelines

In the first of this class of appeals (Alberta Planning Board file, 72-C-177), a landowner who had previously subdivided two 20-acre parcels made an additional request to subdivide two more 20-acre parcels. The land was zoned for country residential use but the Commission refused the proposal because the proposed parcels were not consecutive with the existing ones. In the Commission's view, the landowner was attempting to isolate the parcels to make it less likely that future subdivision requests would be opposed. At the appeal, the Board agreed that the proposal was both disorderly and illogical and they denied it.

In this class of appeals, the economics of development were considered as much as the orderliness. In Alberta Planning Board case 76-C-293, a proposal was made to subdivide a quarter-section into two 80-acre parcels for agricultural use. The Muncipality recommended that the request be refused as the subdivision was projected for an area that was otherwise unsubdivided. The Commission clarified this objection by stating that the provision of services to the subdivision would be too costly. The C.R.P.C. maintained that, in general, subdivision should be confined to areas where services were readily accessible. The Board agreed with the Commission's contention and its estimation of the proposal and denied the appeal. The Board stated that if a subdivison did not actually contribute to orderly and economic development it could not comply with the spirit and intent of the Act. Similar decisions were reached in like appeals, such as Alberta Planning Board files 76-C-275, 76-C-259 and 76-C-472. In the last case, for example, the Board stated that "the provision of services on a piecemeal basis [was] uneconomic and [did] not constitute sound planning".

Yet, three of the eight appeals of this class were approved by the Board. In the first (Alberta Planning Board file, 74-C-149), a landowner proposed to subdivide a 50-acre parcel from a quarter-section to satisfy the wishes of a minority partner in the holding. The Municipality and the Commission believed that the size of the parcel could prejudice future subdivision. Neither planning body had any other objections to the proposal. At the appeal the Board learned that the reason for requesting the odd parcel size was that the minority interest in the land amounted to five/sixteenths of the total. In the absence of other difficulties the board allowed the appeal.

In case 74-C-295, a landowner proposed to subdivide a 40-acre parcel from a quarter-section. The poor quality non-arable character of the land was not disputed by the Commission; rather, it opposed the subdivision with the M.D.'s support on the basis of its presumed poor road accessibility . At the appeal it was learned that the landowner lived immediately adjacent to the proposed 40-acre parcel and that the telephone line and power easement passed through the parcel. The landowner further maintained that since services had already been extended they could only become more economic through additional usage. The Board saw merit in the landowner's argument and, given the poor quality of the land, approved the appeal.

In a somewhat similar case (Alberta Planning Board file, 76-C-171), a proposal was made to subdivide a 20-acre parcel and a 40-acre parcel from an existing 138-acre holding. The land was situated on the Old Banff Coach Road and both parcels were intended for country residential use, in accordance with the zoning bylaw. The Municipality's objection lay in what they perceived as a poor parcel design which they feared could hamper the future extension of roadways. The Commission reaffirmed the M.D.'s objection and refused the request. The Board, however, found that both parcels were furnished with legal accesses. In approving the request the Board noted that it was not satisfied that roads for future subdivisions needed to be set aside so far in advance of a demonstrated need.

In general, the preliminary regional plan's land use guidelines were very broad and encompassed a host of objectives from a variety of statutes. It was therefore not surprising that several subdivision proposals were refused on the grounds that they failed to respect the plan in that they were substandard with respect to other provincial policies.

Overall, these were special appeals in that the matter of their propriety under the plan hinged upon points which the Board had the power to interpret and waive.

In Alberta Planning Board case 73-C-118 a landowner proposed to subdivide two 40-acre parcels from his quarter-section. The M.D. was in favour of the proposal subject to the usual assumption by the landowner of all costs for road construction, culverts and crossings. The Commission refused the request since the landowner had not furnished access to both sides of the parcels which were crossed by Beddington Creek. At the appeal the Board ascertained that Beddington Creek was, at best, an intermittent creek and could not be considered a hydrographic feature. The matter was then returned to the Commission for re-examination. In effect though, the Board recognized the legitimacy of the subdivision but did not render a decision.

In Alberta Planning board case 73-C-649, a landowner proposed to subdivide a 1.62-acre parcel from a 5-acre parcel for use as a country residential lot. The property was located in Bragg Creek, a resort community. The Municipality had no objections to the proposal as the land was developed and the local zoning was not challenged. The Commission found that the subdivision was planned to give a separate title for a lot on which a cottage had stood since 1948, but nonetheless refused it due to access problems. The Subdivision and Transfer Regulation required a 66-foot roadway, but the appellant did not wish to install the full width road to service only one dwelling. At the appeal, the Board ruled that the entire matter of access in parts of the community could be brought to prevailing standards only through extensive replotting. In view of that, the Board saw no harm in allowing a road of substandard width so long as the cost of its construction was borne by the landowner. In addition, he was to enter into an agreement with the Muncipality regarding other municipal conditions such as the provision of reserves and culverts and crossings.

In a similar appeal (Alberta Planning Board file, 76-C-498), a landowner proposed to subdivide a 20-acre parcel from a 73-acre parcel for use as a campground. The Municipality favoured the proposal but the Commission required the landowner to provide a 132-foot wide road right-of-way to service the development. The standard width of roadway required by the Subdivision and Transfer Regulation was 100 feet. The landowner maintained that the standard width road was sufficient to serve the projected needs of the

campground and lodged an appeal. At the appeal the Board found that the Commission's requirement was neither requested nor required by the Regulation or by the road authorities. Accordingly, the Board allowed the appeal and the construction of the standard width road. In these matters, the Commission's conditions were judgements based more on practice than on policy, and so were rather easily rejected.

The subjectivity of the planning authorities' decisions is nicely illustrated in an appeal against the refusal of a subdivison proposal to create thirteen 2-acre parcels and a residual 104-acre parcel on a holding of 135.25 acres (Alberta Planning Board file, 74-C-47). The Muncipality did not object to the proposal but the Commission rejected the request because it believed the fifteen degree slope of the majority of the land precluded convenient development. At the appeal, the Board ruled that the landowner could proceed with the subdivision as long as he adhered to conditions specified by the Department of the Environment and the plans of engineering consultants retained by the landowner to design the subdivision. The Board found that with these conditions the subdivision could permit an acceptable use of land with little agricultural capability.

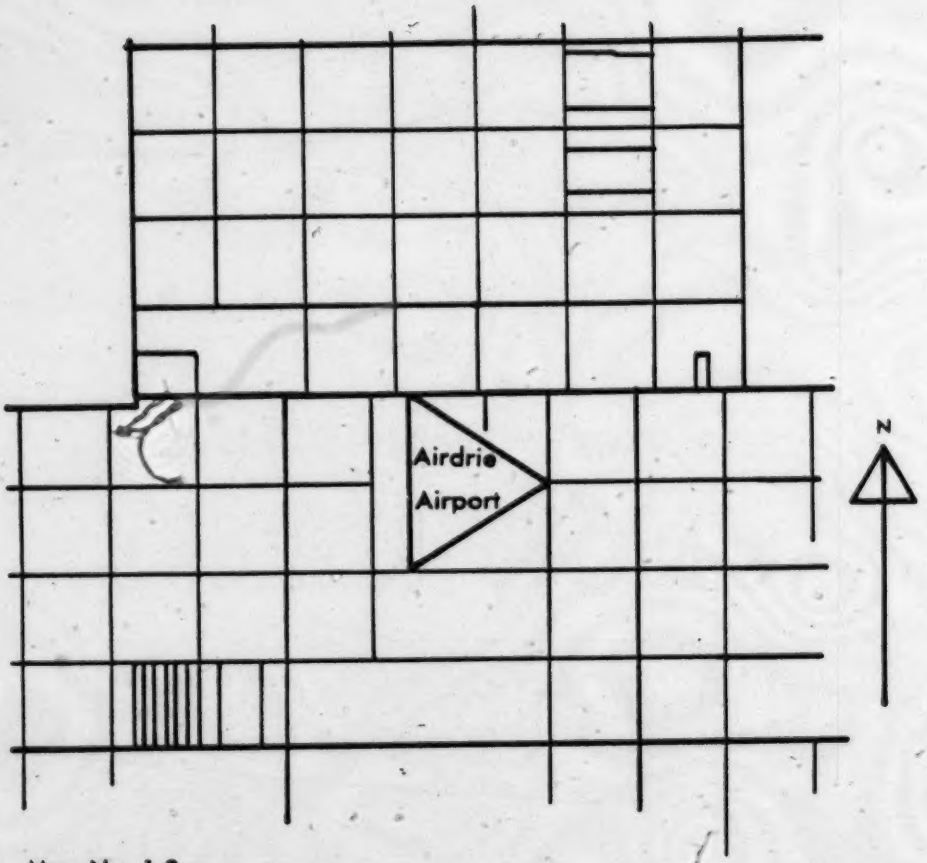
Alberta Planning Board case 72-C-565 again dealt with topographic concerns. The Calgary Regional Planning Commission refused a subdivision proposal which would have created six 0.40-acre lots and a residual parcel of 1.21 acres as it believed the ruggedness of the site would preclude convenient development. The Municipality did not oppose the proposal as it was in accord with the local zoning. The Board found that the land was considered the best unsubdivided land in the area and was within the accepted boundary of the community. It accordingly ruled that, as only seven parcels were to be created and the density was similar to that existing in other parts of the hamlet, the proposal was acceptable. The approval carried the condition that the landowner enter into an agreement with the Municipality to provide services at no public expense. Similarly, reserves were to be set aside in accordance with the C.R.P.C.'s requirements.

Topography was again the reason used by the Commission to refuse a proposal to subdivide a 20-acre parcel from a 50-acre parcel (Alberta Planning Board file, 72-C-589). The Commission stated that the parcel was subject to flooding and afforded only a single building site, hence the subdivision was unnecessary. The Municipality was similarly opposed to the proposal and they refused a request to have the land rezoned

from 'general agriculture' to 'rural holding'. The matter was appealed and the Board did not render a decision as the proposal was contrary to the preliminary regional plan. The Board's refusal to render a decision effectively closed the matter.

Appeals against airport vicinity land use guidelines

The final sub-group of appeals arising as a result of the land use guidelines concerns subdivision in the vicinity of airport facilities. The plan clearly restricted most subdivision and development near such facilities but several appeals were generated. In the first a landowner proposed to subdivide fifteen 4-acre parcels with the balance of the quarter-section held by undivided interest among the fifteen lot holders (Alberta Planning Board file, 72-C-124). In most respects the proposal was like the multiple ownership proposals advanced in the late 1960s. The Municipality favoured the subdivision and even went so far as to change the local zoning from 'general agriculture' to 'small holding' to accommodate the proposal. The Commission, however, objected to the zoning change and referred it to the Board, while also refusing the subdivision request because of its location adjacent to the Airdrie Airport (see map no. 10). At the subsequent appeal the Muncipality stated that the Airdrie Airport was a private facility and so was not subject to the plan. In addition, the airport was only licensed for private aircraft and the volume of traffic was small. In short, the M.D. did not see the airport as a possible impediment to development. The Board, however, agreed with the Commission and stated that the subdivision was contrary to the spirit and intent of the preliminary regional plan. Given that, the Board was unable to render a decision. In effect, of course, the matter was settled to the Commission's satisfaction and the question of the Municipality's change of zoning became irrelevant - but not to the M.D., as became clear when the Board was asked to hear a similar appeal less than a month later (Alberta Planning Commission file, 72-C-185). The proposal was to subdivide a quarter-section into four equal parcels with an additional 16-acre parcel set aside for dedication of public reserve. The quarter section was located about one-half mile from the Airdrie Airport in an area that had only recently been zoned for agricultural use. Now it was rezoned to 'small holding', as the M.D. repeated its argument that the Airdrie Airport was not the kind of facility to which the preliminary regional plan applied. Again, the Commission refused to accept the Municipality's contention and refused the subdivision request. The appeal met with the same result as the



Map No. 10
Airdrie Airport and Vicinity
Scale 1:126720

first; the Board held that as the proposal was opposed to the preliminary regional plan, it did not have the jurisdiction to render a decision.

The land around the Airdrie Airport must have been exceptionally attractive, because a few months later yet another appeal was lodged. This one concerned the Commission's refusal of a subdivision proposal to take a 10-acre parcel from a quarter-section for the isolation of a farmstead (Alberta Planning Board file, 73-c-100). On this occasion the M.D. opposed the subdivision, based on the Board's previous treatment of requests in the vicinity. The case hinged on the fact that it was for a farmstead isolation and not simply for the creation of speculative properties. In addition, there was no controversy over changes to the local zoning. At the appeal the board found that the farmstead had existed prior to the establishment of the airport and that the circumstances were sufficiently dissimilar to previous appeals that it had jurisdiction in the matter. It ruled that the request was not opposed to the provisions of the preliminary regional plan regarding subdivision adjacent to airports or those affecting farmstead isolations. Accordingly, the subdivision was allowed, but with the condition that the landowner assume all costs for the construction of roads, culverts and the like. He was also to provide public reserves to C.R.P.C. specifications.

The next case of this type heard by the Board concerned a proposal to subdivide a 40-acre parcel from a quarter-section in the vicinity of the Calgary International Airport (Alberta Planning Board file, 73-C-277). The zoning for the area was 'general agriculture' and the M.D. opposed the subdivision. The Commission had originally been inclined to accept the subdivision but refused it when it was learned that the property lay within the 25-30 N.E.F. (noise exposure forecast) contour. In informing the applicant of its decision, the Commission noted that the Board had consistently opposed subdivision near airports where the parcel density would be increased. In addition, the Commission stated that development in the area would be inconsistent with safety and noise factors, but it took its stance purely on the basis of the Board's previous actions, since it knew that the Canadian Air Transport Administration had no objections to the proposal. That lack of opposition led the Board to alter the Commission's refusal, with the proviso that development be directed into portions of the parcel outside the 25 N.E.F. contour. Thus, the approval was qualified and the Commission's judgement was not completely challenged.

In the final appeal of this kind (Alberta Planning Board file, 76-C-224), a landowner proposed to subdivide a 140-acre parcel into seven 20-acre parcels for disposal as rural holdings. The use was compatible with the local zoning and was unopposed by the M.D. but the Commission thought that the land lay within the 30 N.E.F. contour of the Calgary International Airport. It refused the subdivision request. Then, upon appeal, the Board ascertained that the Commission had been in error. The appeal was therefore allowed. In the Board's opinion, the zoning was appropriate for the projected land use, which, in its turn, was an appropriate and suitable use for the land.

6.4.2 Subdivision proposals contrary to the two-parcel rule

While the two-parcel rule, as such, was almost completely supplanted by the parcel density regulations, there were occasions when landowners requested subdivisions which would have resulted in more than two subdivided, yet undeveloped, parcels on a quarter-section. When such a situation arose the Commission could not approve the request and an appeal could be made, though the number was greatly reduced by the second preliminary regional plan.

The first appeal (Alberta Planning Board file, 73-C-304) was against the Commission's refusal of a request to subdivide two 40-acre parcels from a 80-acre parcel. The 80-acre parcel represented the balance of a quarter-section from which two 40-acre parcels had previously been subdivided. The Municipality considered that the development on one of the parcels was below acceptable standards and declared that if the new subdivision request was granted there would be three undeveloped parcels on the quarter. For that reason they opposed the request. The Commission, similarly, refused the subdivision. The matter was appealed and the Board found that the landowner could request a single parcel with no difficulty. If the parcel size of that subdivision was 80 acres the landowner could develop half of the parcel and then request future subdivision without compromising the policy. The Board then ruled that subdivision approval be granted for a single 80-acre parcel with attached conditions that specified that development to muncipal standards be undertaken on one-half of the parcel and that the landowner dedicate land for road widening, public reserves and assume all costs for culverts, crossings and internal roads. In this instance the landowner was presented with an

alternative that was acceptable and which did not challenge the policy.

In the next appeal against the two-parcel policy (Alberta Planning Board file, 75-C-333), a landowner proposed to subdivide one 20-acre parcel from an existing 60-acre parcel for use as a rural holding. The Municipality recommended that the request be refused as there were already two undeveloped parcels on the quarter-section. The C.R.P.C. concurred, both for that reason and because the subdivision proposal failed to respect the parcel density regulations. Four parcels already existed on the quarter-section and that was the maximum permitted. Section 16(b) of the Planning Act, 1970, specified that land could not be subdivided if the subdivision was contrary to an existing general plan, preliminary regional plan, regional plan, or like statute. Hence the Board had no power to make any decision to alter the Commission's rejection and it ruled that it had no jurisdiction to hear the appeal.

The third and final appeal (Alberta Planning Board file, 76-C-316) involved a proposal to subdivide a 40-acre parcel into two 20-acre parcels for an unspecified end use. As in the previous case the M.D. was opposed and the Commission refused the application. The landowner, however, made an application to the Municipality to have the land reclassified to 'rural holding'. If the reclassification was granted the proposal would have been acceptable, given the higher allowable parcel density. The Board therefore determined it had the jurisdiction to hear the appeal, but then ruled that the proposal was premature until such time as the Municipality had examined the reclassification request. Accordingly, the appeal was denied.

6.4.3 Subdivision appeals not meeting minimum parcel size guidelines

Regulations on the minimum sizes of subdivided parcels had proved to be a useful tool for restricting subdivision under the first preliminary regional plan. With the heightened concern about urban containment in the second preliminary regional plan, minimum parcel sizes were increased almost uniformly. Most pertinently, the majority of the lands within the Municipal District of Rocky View were classified 'general agriculture' and had a minimum parcel size of 40-acres, a regulation designed to complement the density limit of four parcels per general agricultural quarter-section. Since the two regulations were tied so closely together, the Board was reluctant to vary the minimum

parcel size standard. Of the 12 appeals, only five were upheld while two were denied and in five cases the Board ruled it had no jurisdiction to render a decision.

In the first of the upheld appeals (Alberta Planning Board file, 75-C-28), a proposal was made to subdivide a 10-acre parcel into two 5-acre lots for country residential use. The Municipality refused to relax its 40-acre minimum parcel size restriction and recommended that the Commission reject the proposal, which it did. At the appeal the Board found that the proposed use was suitable for the land. It also found that if one of the parcels had its title consolidated with an adjacent title the parcel density regulations would not be challenged and the Board's jurisdiction in the matter would not be questioned. It then allowed the appeal conditionally. The landowner was to consolidate the title of one of the 5-acre parcels with an adjacent title and assume responsibility for road, culvert and crossing construction, the payment of due taxes, and the dedication of land for corner cuts, as well as assuring that access to both parcels was made to municipal standards. In short, the appeal was allowed but only in such a manner as not to challenge the status quo with respect to the parcel density regulation. The decision was not considered a challenge to the Commission's provisions regarding the conservation of farmland since the original 10-acre parcel could not be considered a viable agricultural unit. Similarly, the proposal did not represent an extension of subdivision into an unsubdivided area.

In Alberta Planning Board case 76-C-327, a land owner proposed to subdivide from an existing 143-acre parcel, one 28-acre parcel for a 'general agricultural' use. The land was physically isolated from the larger balance of the quarter-section by the Trans-Canada Highway and the M.D. relaxed its zoning bylaw to allow this substandard parcel. The Commission, however, refused the application for subdivision as it was below the acceptable minimum parcel size. At the appeal the Board learned that the parcel was rated class four on the Canada Land Inventory (fair arable land), and that the physical isolation of the parcel, combined with its limited productivity, made it impractical to farm. The Board also learned that services could be easily extended to the parcel and access from an undeveloped road allowance could be built. In light of that information, the Board ruled that the subdivision did not appear contrary to the 'greater public interest' and it upheld the appeal.

In a somewhat similar matter (Alberta Planning Board file, 76-C-271), a landowner proposed to subdivide an 8.9-acre parcel from the Canadian Pacific Railway station grounds at Inverlake. The landowner intended to use the land for a country residence. The Municipality recommended in favour and was prepared to relax the municipal setback regulations. The Commission, however, refused the request as it was below the minimum parcel size for a general agricultural area. The matter was appealed and the Board learned that the parcel was of a highly unusual shape, being about one hundred and fifty feet wide and almost half a mile long. The land was also bordered on one side by the C.P.R. right-of-way and on the other by a developed road. The Board accepted the subdivision saying that its use for a country residence would be better than to let the land lie unused. The landowner was to fulfill several conditions appended to the Board Order, which required him to provide public reserves as per C.R.P.C. guidelines as well as to construct access and services to municipal standards and to pay any taxes due. Here, again, the Board was careful to weigh the impact of the request against its potential to challenge the regulations. In approving the request the Board acknowledged the land's limited suitability for most uses other than a country residence.

In yet another similar appeal (Alberta Planning Board file, 76-C-305), a proposal was made to subdivide an 8-acre parcel from a quarter-section. The subdivision was to separate an abandoned farmstead from the balance of a farmed quarter-section. The farmstead was to be rehabilitated and used as a country residence. The Municipality approved of the use and relaxed its zoning bylaw to allow the development. The Commission, however, feared that abandoned farmsteads all over the region would be subdivided from their parent quarter-sections if this first case was approved. The Commission argued that the subdivision of abandoned farmsteads could defeat the goal of restricting small parcel development. At the appeal the Board found that the farmstead was physically isolated from the quarter-section and that it was serviced. The Board thought that the parcel was well suited as a country residence. In addition, the Board stated that the parcel existed in fact, if not as a separate entity, and that little damage could result from its subdivision. Accordingly the appeal was upheld.

The last in this series of appeals was a rather exceptional case (Alberta Planning Board file, 78-C-260). The subdivision request was made by Calgary Power for an

18.18-acre site for a transmission right-of-way. The Rocky View municipal planning commission recommended acceptance and referred the matter to the Council for its approval to relax the minimum parcel size regulations. The Council, however, refused to relax the provision. Like the Commission, it wanted to see the entire right-of-way proposal so as to ensure planning continuity. The matter was further complicated by the fact that the alignment of the right-of-way had been approved by another provincial quasi-judicial agency, the Energy Resources Conservation Board. At the subsequent appeal the board noted that the subdivision was required for construction of the transmission line and that the Municipality and the Commission had not registered any objections to the proposal when it was under discussion by the E.R.C.B.. In addition, the Commission's fear that the right-of-way could endanger access to various parcels was alleviated by Calgary Power's assurances that permanent easements would be granted wherever necessary. In upholding the appeal the Board said that it was satisfied the E.R.C.B. had the comments of the Commission and the Municipality and that they were taken into consideration before the Board gave its approval of the project. The Board also said that the Commission's concerns regarding access across the right-of-way could be solved as required.

The matter of parcel size, in this instance, was obscured by other objections, the most basic of which was the Commission's belief that it had not been consulted to the degree that the land use planning agency for the area should have been. Here, though, the Board deferred to the judgement of the E.R.C.B., which again demonstrated the Board's willingness to accept the judgement of provincial agencies over the objections of local authorities.

The first of two subdivision proposals denied after appeal was made to subdivide a 10-acre parcel from a 20-acre parcel (Alberta Planning Board file, 76-C-463). Both parcels were to be used for country residences. The area was zoned for country residential use but the minimum parcel size was 20 acres and the maximum parcel density was eight parcels per quarter-section. The Municipality was opposed to the request and refused to relax its zoning bylaw to allow the substandard parcels. The Commission similarly refused the proposal. At the appeal the Board found that the majority of the subdivided parcels in the vicinity were of 20 acres. It accordingly denied the appeal, saying that the proposal was contrary to the spirit and intent of the preliminary regional plan.

The second denied appeal was in some measure a hardship case (Alberta Planning Board file, 77-C-438). The proposal was to subdivide a 5-acre parcel from an unsubdivided quarter-section in order to isolate a partially constructed house from the balance of the quarter-section. The small parcel was requested by the widow of the registered landowner who wished to sell the land. The intended purchaser, however, did not wish to acquire the partially completed dwelling. The Municipality opposed the request because it was some 35 acres below the minimum parcel size, and the Commission was additionally disturbed about the lack of provision for legal access to the parcel. In essence, the Board concurred and, in denying the appeal, said the proposal was opposed to the spirit and intent of the preliminary regional plan. It seemed that its deficiencies were too great to be surmounted by the hardship factor.

In the balance of the minimum parcel size appeals, the Board believed it had insufficient jurisdiction to render decisions. The Board could, however, rule as to whether a matter was rightfully before it and this resulted in some confusion and inconsistency. In the following appeal (Alberta Planning Board file, 73-C-255), for example, it was proposed to create a 20-acre parcel from an unsubdivided quarter-section, and the Municipality relaxed the zoning bylaw to permit the subdivision. Since the land was in an area zoned for general agriculture the Commission objected to the relaxation and rejected the subdivision application. When the matter came before the Board, it also found that the proposal was contrary to the minimum parcel size regulations of the preliminary regional plan and so could not be allowed under section 16(b) of the Planning Act, 1970. Yet, this appeal was similar in many respects to appeals in which decisions had been made and so highlights the inconsistent interpretation of section 16(b).

In all the remaining cases (Alberta Planning Board file, 77-C-101, 77-C-85, 77-C-119 and 77-C-122), the subdivision proposals would have created a greater number of parcels than were permitted under the density provisions of the preliminary regional plan. In general, the matter of substandard parcel size was overshadowed by the density restrictions, and since the Board was bound to adhere to those restrictions it could not render decisions in any of the cases.

6.4.4 Subdivision proposals not meeting public reserve provision guidelines

Appeals against the public reserve provisions are divided into two groups: those in which the actual provision of reserve lands was disputed, and those which involved the Municipality's authority under its general plan to take cash-in-lieu of public reserve land dedications. The former group is dealt with here while the latter is more properly treated in the section of the chapter dealing with disputes involving the Municipality and provincial agencies.

The preliminary regional plan was quite explicit in its regulation of public reserve land dedications, a point underscored by the fact that only two appeals are dealt with here. The first of these (Alberta Planning Board file, 74-C-20, 74-C-229 and 74-C-230), involved three separate requests for lots of unspecified size on a quarter-section with a lake in its centre. The Commission approved each request subject to the condition that the lake be surveyed from the respective titles and be designated public reserve. The landowners claimed that the lake should be reserved for the use of the lot owners, particularly as it had never been treated as a lake for taxation purposes. In addition, the landowners said the lake had an average depth of one to three feet and dried up periodically. They further maintained that the lake was actually a slough and that having the area reserved for public use would serve no useful purpose. The Board determined that the area in question was a lake and, as such, had no potential for private development. It then ruled that, if subdivision was to proceed, the lake should be surveyed from the land titles and be set aside as public reserve.

In the second appeal (Alberta Planning Board file, 77-C-46), a landowner proposed to subdivide one 8-acre parcel from an unsubdivided quarter-section. The Commission gave its conditional approval to the request. Among other conditions, the landowner was required to dedicate a specific block of land as well as a strip of land running along a creek. Both of those public reserve requirements were appealed. The Board found that the Commission's reserve requirements were entirely proper within the intent of the preliminary regional plan and denied the appeal. Thus, in each case involving the Commission's determinations of public reserve, its decisions were respected by the Board.

6.5 Appeals Arising From Other Causes

Subdivision appeals which arose from disputes not involving the preliminary regional plan were smaller in number than had previously been the case, in spite of increased appeal activity overall. As before, however, such disputes involved conditions appended to subdivision approvals in which municipal or provincial regulations were specified. These regulations required landowners to assume responsibility for road construction or to dedicate land for road construction. In addition, for the first time, landowners were meeting with opposition from several quarters when they proposed to subdivide land in the vicinity of sour gas wells and transmission pipelines. By far the most contentious issue, however, was the Municipality's authority to require the payment of cash-in-lieu of public reserve land dedications.

6.5.1 Subdivision proposals approved subject to Municipal District of Rocky View cash-in-lieu of public reserve land dedications

The authority to require payment of cash-in-lieu of public reserves was derived from the Planning Act and landowners, for the most part, did not object to the principle. The main area of conflict concerned the valuations of land after subdivision on which the amount of the cash payment was determined. The valuations, it seemed, were sometimes far greater than the landowners believed fair. In such instances appeals could be made to the Board for adjustment. In the first of these cases (Alberta Planning Board file, 72-C-177), a landowner proposed to subdivide two 20-acre parcels from a quarter-section for disposal as small farms. The proposal was accepted by the Municipality and the Commission, but the Municipality recommended that the Commission accept the subdivision proposal only if the landowner provided cash-in-lieu of land for public reserves. The Municipality used the figure of $450 per acre as the valuation of the land. At the Board hearing the landowner said that an independent appraisal made for him had set the value of the land at $375 per acre. The Board also ascertained that the 20-acre parcels were listed for sale for $6500 or $325 per acre, the level to which the Board reduced the valuation for the calculation of the cash-in-lieu payment. An interesting point to be noted here was that the Board was varying the decision of the C.R.P.C. which was not involved in determining the valuation.

The second case involved a proposal to subdivide a quarter-section into eight 4-acre lots with the balance of the lands left in a single 128-acre parcel (Alberta Planning Board file, 73-C-402). The proposal was approved by the Commission, subject to the usual road building, right-of-way and water supply requirements, as well as a cash payment for 2.83 acres of reserve land valued at $4000 per acre. The total , then, was $11,320 which the landowner attempted to have reduced by excluding some 12.25 acres of land needed for road construction from the parcel size on which the amount of reserves was calculated. This point was appealed to the Board which ruled that the C.R.P.C. had correctly exercised its authority in rejecting the landowner's request. The disputed 12.25 acres formed part of the subdivision proposal and, as such, part of the parcel for which public reserves had to be set aside.

In Alberta Planning Board case 74-C-206 a landowner proposed to subdivide five 4-acre parcels from an existing 124-acre one. One of the conditions of approval was that the owner provide the Commission with a land valuation on which a cash-in-lieu of reserve charge could be based. This he did, but the Commission rejected the appraised value of $1500 per acre outright, claiming that something closer to $5000 per acre would be more realistic. The case was appealed and the Board found that $1500 was acceptable. The Board stated that the Planning Act did not provide for the inclusion of servicing costs when the cash-in-lieu figure was determined and that it was satisfied that the value of the raw land immediately after subdivision was $1500 per acre. The decision was strongly opposed by the Commission who feared that the low figure would set a precedent of sorts in the minds of property developers. The Commission requested that the Board review its decision but a review was not undertaken. In the Board's view, its decisions did not rely on precedent and did not form precedents.

The Commission's fears were partially dispelled a few months later (Alberta Planning Board file, 75-C-5). In this case a landowner proposed to subdivide seven 4-acre parcels from a quarter-section. Among othe conditions the landowner was expected to pay monies in lieu of public reserve land. The Commission's estimate of the land value was $6000 per acre, while the landowner's appraisal was for $1125 per acre. Upon appeal the Board set the valuation at $3000 per acre.

Similarly, in a later proposal to subdivide ten 2-acre parcels, the Municipality tentatively accepted a cash-in-lieu figure of $5200 per acre (Alberta Planning Board file, 76-C-19). The Commission claimed the actual value of the land was $9000 per acre and an appeal resulted. At the hearing the Board found that the 2-acre parcels were listed for sale at prices that ranged from $20-30,000, with a median price of $25,000. The Board then ruled that a $9000 valuation was fair.

A land valuation was again disputed in Alberta Planning Board case 76-C-469. A landowner proposed to subdivide twenty-four 2-acre lots, and the $13,500 estimate for cash-in-lieu of reserve land was performed by the Assessment Branch of Alberta Municipal Affairs. The landowner claimed the valuation was too high and lodged an appeal. The Board found that the Assessment Branch figure was made with the constraints of the Planning Act in mind and it was satisfied that the valuation was accurate. The appeal was denied.

The Board further clarified the cash-in-lieu of public reserve provisions in Alberta Planning Board case 76-C-75. A landowner proposed to subdivide a 40-acre parcel into sixteen lots averaging 2.5 acres each. The approval carried a cash-in-lieu condition, and the value recommended by the Commission was $12,000 per acre. The landowner argued that the correct basis of valuation was the price per acre for the portions of the property that had already been sold, but the Commission maintained that its valuation was based on comparative estimates for similar subdivisions in the area. An appeal resulted. The Board supported the Commission's method of valuation and denied the appeal.

In Alberta Planning Board case 77-C-10 a landowner proposed to subdivide fifteen small parcels encompassing 61 acres. The subdivision proposal was conditionally acccepted and one of the conditions specified that the cash-in-lieu value be set at $8500 per acre. That estimate was based on a comparison of the prices of other similar subdivisions in the vicinity. The landowner argued that a specific estimate for his land had not been performed and for that reason, the estimate was not accurate. At the appeal the Board made an about face regarding the use of comparative estimates. The Board found that the Commission's estimation of fair market value for one property could not always be relied upon to show the fair market value of another property. The Board consulted the landowner's appraisal estimates and reduced the cash-in-lieu figure to $6436.75 per acre.

Hence, the appeal was upheld.

In Alberta Planning Board case 76-C-197 a landowner proposed to subdivide seven 4-acre parcels from a quarter-section. The proposal was approved in 1976 and a cash-in-lieu valuation of $5000 per acre was agreed upon at that time. The subdivision was not fully completed within the one year period of effect of the subdivision approval and the appellant requested the Commission to grant a six month extension, which it did. Shortly after, however, the Commission raised the cash-in-lieu valuation to $7500 per acre. At the appeal hearing the Board rejected this adjustment, saying that the conditions of subdivision were substantially complete when the Commission reviewed the matter and any change was therefore unwarranted. The appeal was upheld, but it should be noted that the Board was careful not to impugn the principle of reviews, only its practice in this particular instance.

The final appeal of this kind involved a proposal to subdivide seven 4-acre parcels for country residential use (Alberta Planning Board file, 77-C-36). In this instance the Municipality recommended a cash-in-lieu of public reserve figure of $8000 per acre. The Commission accepted this valuation but the landowner appealed. The matter was also subject to the new Planning Act, 1977, under which instead of making a valuation immediately after subdivision, it was necessary to determine the land's 'fair market value' as of November 1977. The Commission's appraisal was not conducted until the summer of 1978, whereas the appellant's appraisal which arrived at a value of $3857.28 per acre, was made in November 1977. This, then, was the figure accepted by the Board in upholding the appeal.

6.5.2 Subdivision proposals subject to Municipal District of Rocky View road construction provisions

The Municipality's road building conditions appended to the Commission s subdivision approvals were generally as contentious as they had been under the first preliminary regional plan. In the first of these cases (Alberta Planning Board file, 72-C-641), a landowner proposed to subdivide two 40-acre parcels from an 80-acre parcel to satisfy a division of community property for a divorce settlement. The Muncipality and the Commission approved the subdivision subject to a condition which

required a 100-foot service road dedication along one side of the parcels. The matter was appealed but the Board ruled that the dedication of the service road was warranted. The Board also noted that the settlement of the community property dispute could be accomplished without the subdivision and denied the appeal. That, however, was the only denial awarded in six appeals to the Board.

In Alberta Planning Board case 74-C-30, a proposal to subdivide two 17-acre parcels from a 214-acre parcel was conditionally accepted pending the widening of a road allowance to 100 feet and the extension of an internal road by about half as much again in order to connect with Highway 1A. The Commission and the Municipality had jointly decided to attempt to ensure that country residential cluster developments could be reached from at least two access points. Cul-de-sac roadways, which were preferred by developers, were incompatible with that goal. In this instance, however, the Board ruled that the amount of road construction demanded by the Municipality was excessive and unwarranted. It accordingly upheld the appeal, deleting all of the road building conditions.

In Alberta Planning Board case 75-C-357, a landowner proposed to subdivide three 20-acre parcels from a quarter-section. Among other conditions, the Municipality recommended that the Commission require road widenings and the construction of service roads on both sides of a developed municipal road bisecting the quarter-section. The landowner believed that the amount of road construction demanded was unfair and appealed the matter. The Board agreed that the road construction was unrealistic, particularly as the municipal road was not a numbered highway and was not therefore required to have service roads adjoining subdivided parcels. The Board also noted that each of the parcels could have legal access to the roadway with little difficulty. In upholding the appeal the Board said that if the Municipality needed land for road widening they could negotiate with the landowner for its purchase.

In a somewhat similar matter (Alberta Planning Board file, 75-C-389), a landowner proposed to subdivide a 40-acre parcel into two 20-acre parcels. The proposal was not contested by the local planning agencies but the Commission did append its subdivision approval with a requirement that the landowner construct a portion of a road allowance in the vicinity of the parcel but not adjacent to it. The landowner objected to the condition on the basis that his parcel had legal and physical access and that the parcel would not benefit

in any way from the road construction. The Board verified this at the appeal and ruled that the road building condition had no rightful relation to the subdivision request and so could not be included as a condition of approval.

In Alberta Planning Board case 77-C-26 a landowner proposed to subdivide a quarter-section into two 80-acre parcels for agricultural use. The subdivision approval was appended with a variety of conditions, one of which was that the landowner construct a 100-foot wide service road along the entire length of one of the parcels. The landowner considered that requirement to be excessive and appealed it. The Board found that only one additional access point would be required along the secondary roadway which hardly constituted a reason to construct a service road. Hence, the appeal was upheld.

6.5.3 Subdivision proposals approved subject to Department of Highways limitations and provisions

In the previous study period a condition of subdivision approval recommended by the Department of Highways was a virtual commandment. Perhaps for that reason the number of appeals against such conditions were few and, for the most part, of a character that legitimately required the Board's adjudication. Moreover, of the four appeals lodged only one was denied.

In the first case in this series (Alberta Planning Board file, 75-C-386), a landowner proposed to subdivide an existing 40-acre parcel into two 20-acre parcels for use as rural holdings. His request was refused by the Commission which noted that the land was adjacent to an arterial roadway development proposed by the Department of Highways. The Board learned that the Department had been considering the development for about five years but that no declaration of the Department's intention had been made. In addition, no land had been acquired for the project. The Board then said that it had to concern itself with the subdivision matter at hand, not with the subdivision's potential impacts upon an undeclared highway project. Accordingly, the Board allowed the appeal, with the usual conditions.

In Alberta Planning Board case 73-C-486, a landowner proposed to subdivide from a 110-acre parcel one parcel of 16.5 acres for disposal as a small holding. The Municipality had no objections to the proposal, which was eventually to give rise to several

small holdings. The Commission, however, given the long-range plans of the developer and the Department of Highways, required a 132-foot road dedication adjacent to the parcel. The Municipality stated that they did not feel the road was required and the landowner appealed the condition. At the appeal the Board learned that the wide road would not be required in the forseeable future. It then allowed the appeal but applied several conditions to the approval. For example, the landowner was to ensure that future subdivision was for parcels of about 20 acres in size and that there be no more than twelve parcels on the site; he was also to enter into negotiations with the Municipality regarding roadway improvements. In short, the Board removed the Commission from discussions of future roadway services in and around the particular subdivision.

In Alberta Planning Board case 73-C-261 a landowner proposed to subdivide a single 20-acre parcel from a quarter-section for use as a small farm. The Municipality did not object to the proposal but the Commission specified that the landowner undertake road construction along the portions of the property that fronted on a secondary road. The construction would have necessitated the removal of a windmill and well. The landowner appealed the condition. The Board found that the service road was not immediately required, but ruled that the land be dedicated and the construction deferred until such time as it was required. In the meantime, the windmill could be left in place.

Alberta Planning Board case 73-C-105 was the only appeal of this kind denied by the Board. A landowner proposed to subdivide a single 20-acre property. As a condition of the subdivision approval, the Commission required the landowner to construct a road through the quarter-section. The Commission believed the road would be needed for future subdivision on the quarter and it was also required by the Department of Highways for their project to connect the Happy Valley project and the Old Banff Coach Road with the Trans-Canada Highway. In denying the appeal the Board said that the internal road should be constructed prior to any further subdivision requests.

6.5.4 Subdivision proposals refused due to proximity to hydrogen sulfide and sulfur dioxide gas facilities

Appeals of this nature were not made to the Board until the mid-1970s. Prior to that time there had been few pressures for subdivision in areas of gas production and

special policies had not been formulated or, at least, were not generally recognized by the land use planning agencies. By the mid-1970s, however, subdivision in the vicinity of sour gas facilities was causing concern to the Department of the Environment, the Energy Resources Conservation Board and various land use planning agencies, because of the danger of exposure to hydrogen sulfide and sulfur dioxide. When subdivisions were requested they increasingly encountered opposition. In the first case of this kind (Alberta Planning Board file, 76-C-250), a landowner proposed to subdivide an 80-acre parcel into two 40-acre parcels for general agricultural use. The Municipality recommended that the proposal be refused as it was within the potential 100 part-per-million hydrogen sulfide isopleth of a gas well. The Commission, similarly, refused to grant subdivision approval, citing the danger to health posed by the location of the subdivision. The matter was appealed to the Board which stated, in its ruling, that to allow increased population densities within the 100 part-per-million or even 500 part-per-million hydrogen sulfide isopleths of a sour gas facility would be irresponsible in light of the potential dangers to health and life. It further stated that while the landowner was aware of the dangers and was prepared to live with them, the Board would not be held responsible for creating smaller separate land titles which could be sold to third parties not fully aware of the hazard posed by the location. In denying the appeal the Board made particular reference to its duty to uphold the greater public interest.

In Alberta Planning Board case 76-C-438, the Energy Resources Conservation Board's opinion was pivotal to the appeal outcome. The proposal was to subdivide an existing 40-acre parcel into two 20-acre parcels for disposal as country residential holdings. The land was within the 100 part-per-million sulfur dioxide isopleth for a sour gas well. The Municipality did not oppose the subdivision but the Commission refused the request. At the appeal the Board requested the opinion of the E.R.C.B. and received a statement that there was minimal hazard to health from this concentration of sulfur dioxide. The Board therefore determined that the land was suitable for country residential use.

In Alberta Planning Board case 77-C-216 the Board again showed its willingness to defer to the judgement of the E.R.C.B.. A landowner proposed to subdivide a single 37-acre parcel from an unsubdivided quarter-section in order to isolate a farmstead. The

Municipality noted that the land was within the 500 part-per-million hydrogen sulfide isopleth of a gas well and recommended that the subdivision be approved only if it was acceptable to the E.R.C.B. and the Commission. Acceptance from the Commission was not forthcoming and an appeal was made to the Board. It was not successful. The Board did not wish to sanction any change to the land title that could have the effect of increasing residential density, a point it termed inconsistent with the greater public interest in such a hazardous zone.

Alberta Planning Board case 75-C-110 was similarly denied by the Board. A landowner proposed to subdivide two 40-acre parcels from a 98-acre parcel for unspecified uses. The Municipality recommended that the Commission refuse the request as a sour gas pipeline bisected the land. The Commission accepted the Municipality's recommendation, whereupon an appeal was made. At the hearing it was found that too little was known about the dangers posed by the sour gas well or the pipeline for any firm estimation of danger to be made. In addition, the landowner had not undertaken studies of ground water availability or soil percolation characteristics, so that the land's physical suitability for habitation was in doubt. The Board therefore ruled that the application was premature.

6.6 Interim Conclusions

The aims of the second preliminary regional plan were particularly tailored to the city of Calgary but its effects were most strongly felt in the rural municipalities surrounding the city. It was designed to be a more comprehensive statement about land use planning goals for the region, but of the several goals advanced, the one with the greatest impact was the containment of urban development within the Calgary city boundaries. The second plan went about attaining that goal in a more consistent and thorough manner than the first plan had done; it also demanded a higher degree of commitment from the Commission's membership.

That increased commitment was backed by the newly adopted statutory requirement that municipalities draft and adopt municipal general plans. These had to be concordant with the Commission's planning aspirations and it clearly sought to present its goals in a manner that would have the maximum impact upon subordinate plans and bylaws.

The Commission's principal goal was, for example, backed by a variety of regulations that served several overlapping ends. In particular, the policies of urban containment and agricultural land conservation depended upon essentially the same instruments. Thus, land use guidelines were applied to all land uses in the region and were explicitly designed to exclude subdivision and development from all but a few sanctioned areas. The land use guidelines, minimum parcel size regulations, and parcel density restrictions all acted to guide and restrict subdivision, and when embodied in the municipal general plan had similar effects upon development.

The parcel density regulations, in particular, were the keystone of the plan. They were adopted because the Commission was well aware that any and all subdivision held the potential to increase rural residential densities. This, in turn held the promise of increased pressures for a wider variety of land uses than existed in rural areas. To maintain stability the Commission had first to restrict subdivision.

The areas least disturbed by subdivision activity were those removed from the urban centres and for the most part in some form of agricultural production. The Board's reception of the planning controls was positive. It respected the goal of farmland conservation and took pains, when appearing to rule against it, to state that, in its opinion, given the particular circumstances, the effects of the upheld subdivision would not abrogate the spirit and intent of the plan. Indeed, to uphold the spirit and intent of the plan whilst granting variance where it was judged to be warranted was the intended function of the Board. In technical planning matters concerning land use provisions, the Board allowed itself a comparatively more free interpretation of the relevant regulations and of the Commission's stipulations. Hence, the Commission's subdivision refusals based on the availability of services, topographic limitations, and the prematurity of subdivision were more frequently overturned at appeal than the farmland conservation regulations had been. Yet even here, the Board was moderate in its decisions. One point, however, which must have caused the Board no end of concern, was the difficulty of rendering decisions upon subdivision appeals which were proved to be contrary to some part of the preliminary regional plan. The Board, like all subdivision authorities and the Minister, were precluded by section 16(b) of the 1970 Act from permitting land to be subdivided if it was contrary to a statutory plan, the Subdivision and Transfer Regulation or the Act. Yet, this ran counter to

the whole principle of a right of appeal and the power to grant variance.

The few appeals against the provisions of the two-parcel rule were largely unsuccessful. Also, since more than two subdivided yet undeveloped parcels per quarter-section were unequivocably prohibited, the Board had to be mindful of the constraint imposed by section 16(b). It was careful not to rule on an appeal that involved that section. Of the three appeals in the group, one was denied, another granted a variance and the last was not ruled upon. The low number of appeals was probably due to the clear nature of the regulation and the unlikelihood that its provisions would be varied at appeal.

The minimum parcel size guidelines were equally clearly stated but were of a nature that had to accommodate occasional irregularities. The Board had to be mindful of section 16(b) here too, as the minimum parcel size provisions were closely tied to the parcel density regulations. The guidelines were not so much predicated upon technical planning considerations as they were on the broad goal of restricting subdivision in general and small parcel subdivisions in particular. Thus, when the Board reviewed them, it did so in terms of the subdivision's impact upon the farmland conservation policy and with respect to the parcel density regulations. In each instance where an appeal was upheld the Board did so after satisfying itself that the spirit and intent of the plan were not challenged. Similarly, where appeals were thought to challenge the plan they were denied in spite of hardship pleas. It is also important to note that the comparatively small number of appeals illustrated that the Commission's management of the policy was generally effective and above conflict.

In a similar sense, the provision of public reserve land conspicuously uncontentious. There were only two appeals, each of which was denied. In one of the cases (Alberta Planning Board files, 74-C-20, 74-C-229 and 74-C-230), the Board's judgement seemed to be genuinely required to interpret the actual definition of a lake within the scope of the Planning Act and Subdivision Regulation. The other case seemed to be a gamble on the landowner's part that a portion of the reserve lands required by the Commission might be waived; the gamble failed.

On balance the Board showed a particular respect for the preliminary regional plan and, when exercising its authority, did so in a moderate manner. There seemed to be very few occasions where the Board's authority was used to challenge significantly the planning

aspirations of the Commission.

The same sense of common purpose did not, however, extend to the conflicts concerning the Muncipality's required payments of cash-in-lieu of public reserve land dedications. The technique, itself, was not contested, but the valuations were frequently contentious. Since the conditions that required the payments were appended to subdivision approvals the Commission was, at least, nominally involved. In the majority of the appeals adjustments were made to the cash-in-lieu figure, either by accepting the owner's valuation or by striking a compromise. These appeals also illustrated the lack of precedent the Board operated under. In one appeal (Alberta Planning Board file, 76-C-75) the Commission's estimate of cash-in-lieu value was verified on the basis of comparative estimates of similar types of parcels, but in another case shortly after, the Board ruled that the practice of determining value through comparative estimations was not fully reliable (Alberta Planning Board file, 77-C-10).

In the previous study period the Board had shown that it looked rather favourably upon conditions of subdivision approval specified by the Municipality and the Department of Highways to require landowners to construct roads or dedicate the land for them. In this study period there was a marked change. The Board modified or waived subdivision approval conditions to dedicate roads or land for their construction in most of the cases where it heard appeals. In so doing it used words such as 'unwarranted' and 'unnecessary' to describe the amount of road building commonly required by the Municipality. Where the conditions prompted by the Department of Highways were concerned the Board looked to the immediate need for improvement and made its decision accordingly. Those conditions that could be deferred until subdivision eventually took place or until there was a demonstrated need, were usually deferred. Overall, the Board gave the impression that it regarded road building conditions as a kind of obligation that should be performed only when the need was clearly evident.

The concern for the hazards to health were at the centre of all the Board's dealings with subdivisions appealed due to their proximity to sour gas facilities. Policy regarding subdivision in such areas were in the process of being formulated and for that reason the Board was very cautious in its appeal determinations. In most of the appeals it did not allow any changes to land titles which could conceivably have had the effect of increasing

residential densities adjacent to sour gas installations and sources.

In retrospect, the Board's appeal activities were of a character that did not challenge the land use policies of the Calgary Regional Planning Commission. Nor did the implementation of the Commission's policies appear to be retarded through the appeal process. For the most part the appeals were treated as special cases, as indeed they were. In many instances the appearance of conflict was exaggerated by the fact that the Commission was unable to grant minor variances from its rules and regulations. That function was reserved for the Board. Had it not been, the number of appeals would probably have been greatly reduced.

Finally, it is impossible to overestimate the effects of section 16(b) of the Planning Act upon the implementation of the preliminary regional plan or the concern it caused the Board. Numerous appeals were effectively removed from the Board's adjudication. At first impression that might seem like a good thing; control devices which might otherwise have been overruled were unchallenged. But the section denied many landowners the right to air their grievances with an administrative statute. Without that right, or the right to political recourse, the affected individuals had no official voice. The situation was not one that could be tolerated indefinitely, without the risk of challenges to the Planning Act in the regular courts of law. Thus, when the Planning Act, 1977, was adopted the equivalent section named only subdivision approving authorities in its strictures. The Board was excluded from its provisions and could then hear appeals against the subdivision provisions of any plan.

7. SUMMARY AND CONCLUSIONS

The statutory control of land use in Alberta was first made possible through the Planning Act, 1913. It was largely ineffective. So, too, was the Planning Act, 1922. But in 1928 the government instituted a Planning Board, its function advisory, which was to coordinate and promote planning measures in the province. Planning controls thus expanded and a review of successive planning legislation in Alberta illustrates that government vested increasingly trust, authority, and power in the Planning Board. The Board had a steadily expanded impact on the regional planning system.

The Planning Board's growth roughly coincided with a marked increase in the creation and use of boards generally throughout the public adminstration. That usage prompted concerns about centralized or local control of policy formulation and the implementation and extension of executive power. The Planning Board was not unique and did not escape these general criticisms.

Throughout its development, the Board has retained a primary concern for the interpretation and coordination of planning policy, as it applied to planning at the regional scale. Its range of responsiblities has included the establishment and funding of regional planning commissions, the review of their plans, and the right to hear appeals against plan provisions. These two latter functions gave it the potential significantly to affect the development and attainment of regional plan policies. The relationship of the Board as appeal adjudicator and the Calgary Regional Planning Commission, as planning agent for the Municipal District of Rocky View, formed the focus of the study. The major point of inquiry was to assess how the Board's appeal-hearing function affected implementation of locally-determined planning policies.

The planning goals were stated in two preliminary regional plans which presented a clear picture of the ends to which the Commission worked. All of the subdivision appeal files investigated concerned conflicts with specific planning measures or conditions of subdivision approval recommended by the Municipality and other interested agencies. Their resolution illustrated the Board's acceptance or rejection of the Commission's actions on a case by case basis. In the aggregate, however, the judgements provide a definite picture of the Board's dealings with the Commission and its attitudes towards the Commission's planning policies.

Though not modelled on a particular historical antecedent, the Planning Board demonstrates several characteristics common since Victorian times. Boards were utilized extensively in the administration of British statutes dealing with such matters as public health provisions, housing quality standards, and initial land use controls. The need for central direction was apparent to Victorian administrators in the fact that no amount of progressive legislation could be implemented without powers of enforcement. With enforcement came the need for coordination, for central controls of standards of application, and some means whereby conflicts with a statute could be appealed or otherwise resolved. In the English experience, enforcement was typically a local undertaking. But to guarantee that laws were being applied uniformly, some central direction was necessary. Similarly, variances from regulatory statutes required the exercise of authority which was not usually vested in local adminstrators. Nor were the courts seen as an appropriate forum for the mediation of these disputes. They worked slowly, were often not technically conversant with the matters at issue, and had a regrettable predilection to the doctrine of private rights that was inconsistent with the notion of individual sacrifice for the greater public good. For these reasons, central authorities tended to retain rather than delegate appeal authority. Hence, central bodies generally became closely associated with the development of policy, the supervision of its implementation procedures and the granting of variances from its extreme effects.

This administrative morphology which characterized British public administration was retained as an integral part of many statutes, the planning acts among them. These were frequently adapted for use in other jurisdictions. Alberta's first Planning Act,in fact, was a thinly disguised version of the English Planning Act, 1909. Relatively effective in Great Britain, it was largely unused in Alberta. Here its use was almost entirely discretionary in that it eliminated the need for central inspection beyond that of ministerial sanction and eliminated the central promotion of planning. That omission was critical since, at the local level, there was a general lack of administrative sophistication. A similar situation was recognized with the small communities of Ontario. Early in this century the government sought to examine the administration of municipal corporations in other jurisdictions with the intention of adopting improvements. The net result of the study was the creation of a central board responsible for annexations, municipal boundary

adjustments, some matters of municipal finance, and the approval of bylaws relating to roads, bridges, public utilities and so on. After 1917, that central authority also had responsibility for planning and, as in Great Britain, regulated the provisions of the Act and granted variances. Indeed, the Ontario Municipal Board soon became the authority for municipal regulation where quasi-judicial decisions were required.

The Alberta Planning Board does not have the scope of the Ontario Municipal Board but was established for many of the same reasons. The Planning Board's creation in 1928 established a degree of control of land use along highways and in areas of scenic beauty. Its initial regulations in no way infringed upon the autonomy of municipalities but it was to advise them of available planning measures. Changes to the Act in 1929 extended the Board's control of land use throughout the province outside the cities, towns and villages. The Board made and policed its own regulations but for the most part was kept well away from matters directly affecting municipalities. Nonetheless successive amendments to the Act allowed the Board to take a larger role in the regulation of land use, particularly on the fringes of urban centres.

Without controls land subdivision in the vicinity of urban centres was rather disorganized and disorderly. Land was also subdivided for speculative purposes in amounts that far exceeded demand. Services were difficult to extend into the fringes and many urban municipalities had unwillingly become the owners of vast tracts of subdivided land that was seized in lieu of property taxes. The costs to the public for servicing and holding land was considerable: and more than any other factor, contributed to more stringent regulation of land subdivision. By 1942 the Board was taking an active role in the control of subdivision within urban communities as well as outside them in an effort to reduce the level of subdivision to a point roughly in line with the demand for new land.

It continued in that capacity until 1950 when amendments to the Planning Act were made. Many of the Act's provisions were unchanged but the institutional framework for their administration was extensively revised. The new Act, however, envisaged more stringent land use controls under regional planning with the Board potentially able to affect land use in rural areas through the regional planning commissions which it could create when asked to by two or more rural municipalities. The commissions were advisory and chiefly able to assist with the drafting of municipal general plans, zoning bylaws or the like.

Hence, the Board's ability to influence urban affairs was kept very limited.

The legislative changes to the contrary, there was not a great increase in regulatory activity in rural areas in the short term. The Board's new powers were largely unused. In 1953, however, changes to the Act broadened the membership of the Board to include representatives from all government departments concerned with development which was certainly an indication of the higher profile it was to follow. In 1957 regional planning was made mandatory in the Calgary and Edmonton regions and there was an expectation that commissions would be set up to serve the greater part of the province.

The commissions were established and funded by the Board whose enforcement of the Act's provisions required it to monitor most of the commission activities as well as render quasi-judicial decisions in disputes with them. This had the effect of greatly increasing the board's importance.

Under the 1963 Planning Act, the provisions relating to the management of appeals were made more formal. The Board was given the power to decide whether an appeal was rightfully before it and, like most boards, was not bound by the technical rules of evidence in hearing appeals. Some of those it heard were of a purely adminstrative nature, concerning disputes between the commissions and their member municipalities, but the majority concerned applications for subdivision. In granting decisions to those, the Board was bound to uphold the Act and the Subdivision and Transfer Regulation. Revisions to the Act in 1970 further refined the Board's responsibilities in its hearings by requiring it to consider the spirit and intent of local plans when reaching its decisions. In addition, the Board and all other planning authorities were prevented from taking actions which would allow subdivision when it was contrary to any local plan or land use bylaw, a point which later had considerable impact upon the Board's ability to hear some appeals.

Changes to the Planning Act in 1977 had little effect upon the Board's powers but further consolidated its position as chief adminstrator of regional planning by making it the manager of the Alberta Planning Fund. It was also given the opportunity to review and, if necesary, recommend changes to regional plans before they could be passed to the Minister for ratification. This greatly increased the Board's ability to influence regional plan policies. It has claimed to not specify the substance of local policies but there is a growing fear that it is, indeed, doing so.

Thus, over a comparatively short time, the Planning Board has come into a position of great authority within the regional planning system. It has, in fact, evolved into a central authority rather like those of Victorian England in that it has powers of delegation, inspection and policy formulation, as well as final powers of variance.

This study has dealt with subdivision appeals from the Muncipal District of Rocky View placed before the Board from 1960 to 1978. These numbered over two hundred and concerned a variety of policies and regulations, many of which were modified or amended over the study period. A principal question was whether the modifications were motivated by difficulties encountered with policy implementation, or more particularly, the Board's resistance to either the ends or the means of the regional control system. resistance to them. While each appeal decision was stated, the additive impacts upon planning policy of the appeal process were not known. To formulate a clear picture of those aggregate impacts it was decided to place them into groups corresponding to the periods of effect of local plans, principally the two preliminary regional plans. By doing so it was believed that any policy changes could be rationalized by their relative success or failure upon appeal.

The first preliminary regional plan was adopted in 1963. Previously, the Commission relied upon the Subdivision and Transfer Regulation for land use control. The Act specified that variances from the Regulation could be recommended by a subdivision approving authority, but all relaxations had to be made by the Board after a hearing. This type of appeal, known as a waiver request, accounted for over four-fifths of the appeals in the 1960-63 period. They illustrated the range of provincial regulations which required extensive interpretation but the great majority of the requests concerned relief from provisions governing the dedication of public reserve land. In almost every case the requirement was partially lifted and since most of the requests were unopposed, they did not form the basis for conflict. More conflict was engendered through the subdivision appeals.

Even in the absence of a formal plan, the Commission attempted to develop a differentiation between urban and rural land uses. It was confronted with applications for land uses it considered inappropriate to the rural character of the Municipal District, most notably country residential development and cottage resorts. Both types of subdivision had

occurred prior to the establishment of the Commission, So it was occasionally called to approve extensions to existing developments, although it was loathe to do so. In other instances, subdivision was necessary to regularize prior developments (notably the summer cottage development at Chestermere Lake), which the Commission was also reluctant to sanction. The Commission assisted in the drafting of municipal bylaws to restrict small parcel land uses. This policy was chiefly implemented through the use of minimum parcel size regulations. Small parcel subdivision was, for the most part, prohibited, but in appeals the Board often granted exceptions with little evidence that it was aware of the overall impacts of its actions. It made its decisions on an isolated case by case basis as it attempted to find pragmatic solutions to outstanding problems. Even long-standing measures such as that of limiting subdivision to two undeveloped parcels at a time, were varied upon appeal. Whether these decisions affected the policies adversely was not clear, since the actual number of appeals was very small (11). It is clear, however, that the Board saw its function as one of mediating between the ideology of private rights in property and the ideology of advancement of the public interest (McAuslan, 1980, p.2).

The adoption of the first preliminary regional plan gave the M.D., and the other C.R.P.C. member municipalities, a comprehensive land use plan which was directed toward the attainment of an urban-rural differentiation. It outlined planning objectives, general development policies, and more particular rules and schedules relating to the control of land use on a regional scale. The containment of urban growth within the city of Calgary was advanced as a primary goal; and it was one which had particular impact upon the subdivision of small parcels for recreational, industrial, commercial and country residential uses in the district. The plan also advanced the belief that, for a subdivision to be acceptable, its physical characteristics had to afford basic amenities. Cottage subdivisions, for example, had to offer tree cover, adjacent water, relative isolation, and suitable topography. This and similar policies, when taken together, looked like development controls in the guise of subdivision controls.

A system of land use classes was instituted whose basic purpose was to guide subdivision as well as municipal development control and zoning bylaws. The standard land use class was that for low density agriculture. It was intended to allow land uses that were compatible with the rural economy whilst restricting higher parcel densities through

subdivision. Similarly, other land use classes were specifically tailored to control various types of land uses. They were also designed in a manner that would allow their adoption into local bylaws with little alteration and were further supported by minimum parcel size regulations.

Other established procedures such the two-parcel rule and the public reserve requirement, existed separately from the plan policies. They were applied uniformly as conditions of subdivision in the same manner that they had been treated under the Subdivision and Transfer Regulation. The two-parcel rule assisted the plan's goal of limiting subdivision as it clearly stated that land could not be subdivided in amounts that exceeded probable demand. The Board's established support of the regulation meant that it was seldom appealed and those appeals which were lodged were highly exceptional and did not threaten the spirit and intent of the policy of restricting subdivision. Both of the appeals lodged were allowed, but in granting variance the Board took the opportunity to reemphasize its intention of continued support.

The preliminary regional plan went beyond the Subdivision and Transfer Regulation in its requirements for the dedication of public reserve land. The plan area had been divided into primary and secondary zones for reserve purposes with the primary zone to have public reserves provided outright or deferred by caveat. The secondary zone covered areas removed from urban centres where the provision of public reserves could be waived. The policy was not particularly contentious as only three appeals were made against it. The appeal decisions illustrated that the Board supported the basic notion that public reserves be taken, but only when the density of development in an area warranted their provision. In addition, it did not uphold the Commission's desire to specify the location of the reserve parcel in one appeal. The Board's actions, however, did not detract from the implementation of the policy.

The minimum parcel size regulations were a very important tool of implementation and required the Board's support if the plan was to succeed. They permitted the Commission to exclude subdivision from particular areas by making parcel sizes impractical for all but low density agricultural uses. For that reason alone, the regulations were frequently contested. The Municipal District also contained numerous small parcels isolated from the balance of quarter-sections by road and rail easements. These were

frequently below the minimum permitted parcel sizes but were often suited to small parcel developments, particularly when their agricultural capability was reduced by the difficulty of access for farm equipment. Generally, in its appeal decisions, the Board supported the use of the regulations to implement the plan and effectively backed them but it did vacate them when the circumstances seemed to indicate that the plan goals would not be adversely affected.

One important conflict was the decision of the Commission and Municipality to raise the minimum parcel size for agricultural land to 40 acres. This was an autonomous decision which had not been approved by the Board before it was used to refuse three subdivision requests. In the appeals that resulted, the Board either upheld the appellant's applications or reserved judgement. There was no mistaking the impression that the Board had felt its authority challenged by the local actions. It was not prepared to tolerate local attempts to draft subdivision rules for which its approval had not been granted.

The plan's land use guidelines represented a synthesis of numerous planning policies and formed the most tangible vision of the Commission's aspirations for regional planning in the Municipality. It was remarkable, then, that the guidelines were so little contested. Only three appeals were made against them and two were upheld. That, however, could not be construed as a threat to the Commission's guidelines. One case involved a subdivision request for land on which a Forestry Department facility had been constructed. The Commission considered the development to be an industrial use and so contrary to the land use guideline for the area, but it is likely that the Commission really wished to register its dissatisfaction with the provincial government practice of disregarding local land use plans in its own developments. The Commission also rejected a subdivision request for cottage sites adjacent to West Cochrane Lake on the the ground that the use did not conform to the guidelines for the area. The initial development of the site some years before had progressed only after a subdivision appeal. At that time the Board gave tacit recognition to the developer's right to request a limited number of additional lots in the future. When that application was refused, the Board considered that it had a 'moral obligation' to uphold the appeal, but the general restriction of subdivision through the use of the guidelines was not opposed. Once again, the Board's actions did not seriously hamper the Commission's ability to implement its planning goals.

Overall, the policies embodied in the preliminary regional plan were met with acceptance that was qualified only in particular instances. In that regard, the Board functioned properly and entirely within its statutory mandate. Further, its appeal determinations were comparatively few in number, which effectively reduced the impacts its decisions could have upon the plan policies. But appeals against the plan provisions accounted for only part of the total number of appeals. About one-half concerned conditions appended to subdivision approvals. These were specified by the Municipality or by provincial agencies, and in most cases the Board attempted to balance the public benefit of the conditions against the costs they imposed upon individuals. Road dedication provisions were the most frequently specified conditions as the Municipality wished to avoid all costs associated with the construction of roads for new subdivisions. Surprisingly, there were relatively few appeals made against the conditions. Those which were appealed were usually found excessive in terms of expense and extent. Indeed, the projected costs for some of the conditions exceeded the value of the parcels created. In those cases the conditions were overruled but the small number of appeals can be taken as confirmation that many more conditions were not found objectionable.

The Department of Highways, too, recommended conditions for subdivision approvals and a few of these were appealed. Most, however, were upheld which gave the impression that the Board looked upon the Department's recommendations as being imperative.

The Board's authority was not a power which existed simply to challenge the Commission and the Municipal District where subdivision was concerned and its final powers of approval could be used to the satisfaction of all affected parties. An example of this occurred through the appeals of joint ownership subdivision requests. These were designed to give several individuals title to small lots with an undivided interest in the balance of a large property. The concept of an undivided interest in subdivided land was one which the Municipality and Commission had not previously dealt with but it was gaining popularity with developers. At issue for the Commission was its inability to restrict future subdivision of the lands held in undivided interest and its difficulty in authorizing development agreements. In the course of preparation for three such subdivision requests the M.D. and Commission drafted conditions to address the difficulties they foresaw. The

Commission then refused the subdivision requests and opened the way to appeal. In its resolution of the appeals, the Board bound many of the conditions to the subdivision approval which gave them the necessary authority for implementation. All parties seemed satisfied.

Rather less harmony, however, was seen in appeals lodged against the Commission's desire to have outline plans prepared for numerous subdivisions. If the outline plan was not accepted there was no right to an appeal as there had been no formal application for subdivision. The situation caused the Board great concern as its authority was being seriously challenged. Nor, was it a situation that could long be tolerated: the Board obtained legal opinions to the effect that a refusal of an outline plan amounted to the same as a refusal of a subdivision application. The situation was solved in a relatively short time, but the conflict showed that the Commission was most willing to attempt to remove the potential for the Board to vary its control devices.

Yet, for all that the Commission may have feared the impacts of the Board's variances upon its policies, there was little evidence of concern in this second preliminary regional plan. The statements of planning purpose, and the instruments chosen to implement those purposes, were uniformly stronger. On balance, the plan presents a stronger tone which would hardly be expected if the previously more mildly-worded plan had been too often varied by the Board. The second plan provided a more comprehensive view of the land use control objectives, yet the instruments used to implement the plan were more flexible than had previously been the case and there was less reliance upon the Subdivision and Transfer Regulation. These regulations still existed in their own right, but they were not plannning policies so much as they were conditions of subdivision and the Commission's role for the plan had expanded to the point where the difference was noticable.

The plan's principal method of implementation was through its parcel and population density provisions. The aim was to restrict subdivision and the concomitant urban growth. The decision as to which areas of the region would be classed high, medium or low density was, of course, the Commission's. This was important since its land use aspirations were not always shared by the municipalities, but through the density provisions it could oblige them to draft their zoning and development control bylaws in

accordance with the plan and thereby form an integrated framework.

Of all the plan policies, that concerning agricultural land conservation was the most contentious. Its means of implementation was really the old agricultural land use class reworked to present a stronger face. It specified that land with adequate agricultural potential should be excluded from subdivision. There were 45 appeals lodged against the policy and the Board repeatedly demonstrated agreement with its aims. The Board refused 31 of the appeals and frequently cited the fragmentation of agricultural land and the extension of subdivision into unsubdivided areas as justification for its decisions. Similarly, when it approved appeals, the Board looked to the spirit and intent of the policy, and the implication was that subdivision for bona fide agricultural pursuits was not contrary. In 8 of the 12 approved appeals the Board found that the subdivision was needed to enhance agricultural production. Only in the other 4 did the Board demonstrate willingness to waive the policy.

The land use guidelines also advanced a policy,the aim of which was to allow rural residents (principally farmers and ranchers) to subdivide small acreages upon which their homesteads were located. It was reasoned that farmstead isolation could allow a limited supply of land to satisfy the rural demand for small holdings while ensuring that the productive land base was not threatened with extensive fragmentation. Since country residential subdivision was not allowed in areas zoned for general agriculture, the Commission feared that farmstead isolation could be used to that end. The right to this procedure was therefore limited to quarter-sections which had not previously been subdivided and the new parcels had to contain the principal farm dwelling. In addition, both the Commission and the M.D. examined the sincerity of requests which, from all viewpoints, was a subjective process. Appeals had also to be dealt with in a subjective manner and in 6 of the 9 cases the Board ruled for the appellant. That did not represent an undermining of the policy as the Board frequently made changes to the size of the subdivisions to make them conform more to the general intent. Its authority was also necessary to waive requirements, such as that limiting farmstead isolations to unsubdivided quarter-sections, when it seemed genuinely required. On balance, there was no evidence that the technique was being used to achieve ends other than those for which it was intended.

Policies regarding orderly and economic development were grouped within the land use guidelines under the second plan. Through them the Commission attempted to make subdivision consecutive with existing parcels or at least in the same quarter-sections, as this was believed to reduce the potential for farmland fragmentation. Consecutive subdivision and development also made the extension of services a less expensive undertaking. The Board supported the policy and the Commission's related technical judgements in most cases. It denied appeals in 5 of 8 instances and in the successful appeals satisfied itself that the subdivisions were with merit and did not undercut the policy too markedly. Most of the appeals were special cases which required a degree of variance that the Commission was not able to furnish.

The balance of the appeals against the land use policies dealt with the Commission's interpretation of provincial regulations concerning roadways, and topographic and hydrographic limitations. The Board had the authority to waive such regulations and allowed itself considerable latitude in attempting to find compromises which would satisfy both the landowner and the spirit and intent of the regulations. Here too, variances did not form a challenge to the integrity or authority of the Commission because its ability to interpret the regulations was very limited. The appeals were handled from an approach of trying to bring the subdivisions into conformity with the regulations rather than concentrating on the propriety of the Commission's judgements.

Subdivision in the vicinity of airports was regulated by special provincial policies as well as by the land use policies of the second plan. For the most part these functioned well to regulate such subdivisions and were not the subject of much controversy. The M.D. of Rocky View, however, was not convinced that all airports ought to be included and 3 appeals resulted from subdivision applications in the vicinity of the Airdrie airport. The Municipality had changed its zoning bylaw to allow the uses proposed for the subdivisions, but those changes were opposed by the Commission which also refused the subdivision applications. The Board supported the Commission's contention that subdivision and development in the area were contrary to the plan.

In other appeals of the same regulation, the Commission was not so fortunate. It had refused several subdivision requests in the vicinity of the Calgary International Airport on the basis that they were exposed to high levels of noise. In the appeals it was found

that the Canadian Air Transport Administration guidelines allowed low densities of development in areas of high noise exposure. The Board allowed the appeals on the basis of that information. Rather than being an outright challenge to the regulation, the appeals set new standards (based on federal guidelines) for its implementation.

In spite of having been subsumed into the parcel density regulations, the two-parcel rule remained distinct and over the 1973-78 period, 3 appeals were lodged against it. As under the first plan, this was a very small number relative to the overall volume of appeals. The Board approved one of the requests at appeal, denied another and ruled that it had no jurisdiction to render a decision on the third. In the upheld appeal the Board found it could offer a compromise settlement in which the principle of the rule was respected. In the denied appeal the subdivision plainly ran afoul of the regulation, and in the third the Board was told that the subdivision application was contrary to the plan. Since that was found to be true the Board could not take any action to give effect to the subdivision and accordingly, ruled that it had no jurisdiction to render a decision. The Board's treatment of these appeals evidently showed its continued support of the two-parcel rule.

The minimum parcel size regulations were similarly part of the parcel density and land use regulations while still being independent in some circumstances. Here, too, the Board allowed itself considerable latitude in its appeal decisions. That was believed to be necessary since the regulations had become rather strict. The minimum parcel size of 40 acres precluded subdivisions that would not adversely affect the Commission's principal goals of urban containment and farmland conservation. Accordingly, the Board approved several appeals but in each case was satisfied that the subdivision would not lead to fragmentation or radically increased parcel and population densities. In those cases where there was a danger of compromise to the policies the appeals were denied.

The provision of public reserve land was also little contested. Only two appeals were made and in the first of these the Board's opinion was genuinely required. The case concerned the provision of a water body for reserve land purposes. The argued point was whether the water body was a lake or merely an intermittent slough. It had not been excluded from the land title and the owners had paid taxes on the water covered land. The Commission considered that the water body was a lake and wanted it dedicated a public

reserve. The Board ruled in favour of the Commission and allowed the subdivision so long as the lake was surveyed from the land title and dedicated. The other appeal was lodged over a C.R.P.C. requirement that a landowner dedicate a specific block of land as well as a strip of land running along a creek as a public reserve. The Board found that the request was entirely proper within the intent of the preliminary regional plan and denied the appeal. Here, again, the decisions did not challenge the Commission's policy.

On the other hand, the Municipality's desire to take cash-in-lieu of reserve land was the subject of many appeals, a large proportion of which were varied. The principle of providing cash-in-lieu of reserve land was recognized in the Planning Act and conflicts did not concern that so much as the amount of the valuations on which the dedication was calculated. In all of its determinations the Board sought to attain a fair estimate of the value of the land. Similarly, the Muncipality, Commission and the Assessment Branch of Alberta Municipal Affairs each sought to provide accurate valuations but in 6 of the 10 appeals the Board varied the valuation downward. To resolve the appeals the Board frequently averaged the appellant's estimate and that of the local authority. That may not have resulted in fully accurate valuation, but it most often represented a compromise that both parties could accept. In other cases the Board found that the method of declaring value was faulty and the appeals were upheld but in the process, the local authorities were helped to recognize the standards of the Act which the Board followed.

As in the 1963-72 period, road dedication and building provisions were appended to subdivison approvals. These were greatly contested and the Board's reception to many of the conditions was poor. For the most part the Board characterized the Municipality's requests as being unwarranted or excessive. The appeals involved conditions that, had they not been overruled, would have been quite expensive for individual landowners. It is not known but is suspected that these appeals represented only those in which the approval conditions were particularly onerous. In all probability most conditions of this kind were accepted by landowners as routine obligations of subdivision approval. Notwithstanding that, the Board's rulings certainly affected the Municipality's ability to demand extensive road dedication and or construction as a condition of subdivision approval. In a similar sense the Department of Highways was largely unsuccessful with its conditions appended to subdivision approvals. It seemed that the Department was attempting to impose

requirements for roads whose development was not imminent and the Board thought the imposition of requirements so far in advance of probable need was unjustified.

The refusal of subdivisions due to their proximity to sources of dangerous gases was something the Commission had not forseen when the second plan was drafted. In its period of effect, however, there were 4 such subdivision applications which went to appeal. In reaching its decisions, the Board relied upon the advice and assistance of the Energy Resources Conservation Board. Indeed, the opinions of that Board were not disputed or altered in the Board's rulings. The Planning Board believed that the creation of additional land titles in areas affected by sour gas would be irresponsible. Thus, all but one of the appeals was denied.

One element of particular importance to develop out of the administration appeals against the second preliminary regional plan was the Board's frequent inability to render decisions for subdivisions that were found to be contrary to section 16(b) of the Planning Act, 1970. That section specified that land could not be subdivided unless it conformed to existing preliminary regional plans, general plans, zoning bylaws or their equivalent. In essence the section related, for the first time, the process of subdivision control to the land use planning process. The specification of that relationship was of benefit to the Commission but the Board was placed into some awkward situations. In theory, the Board had the authority under section 78 to approve and request changes to regional plans before they were adopted but, this notwithstanding, the Board was still precluded from rendering decisions in some appeals. That effectively denied many landowners an opportunity to air their grievances, which was counter to the whole principle of a right to appeal and the power to grant variance.

While section 16(b) did not seem to have profound impacts upon the local control of land use or upon the appeal process, it is important to note that in the Planning Act, 1977, the prohibition was dropped for the Board. It still applied to subdivision authorities but not to the Board which could again have access to all appeal cases.

Based on the examination of the appeals, the Commission early established that its control of land use would be based on the restriction of subdivision. Its guide in that task was the notion that all land uses could be divided into urban and rural types. It was implicitly recognized that rural areas and land uses would have to be protected from the

encroachment of urban development. Virtually all of the Commission's planning measures worked to achieve an urban–rural differentiation and to restrict subdivision and development for urban uses. It has been shown that the Board was in broad agreement with the Commission's basic aims.

As they arose, disputes concerned not the underlying purposes of plan policies, but their implementation on a case by case basis. Many exceptions and variances were granted to specific regulations but few of them seemed to have far–reaching negative impacts upon the policies themselves. Indeed, when the two preliminary regional plans are compared it is possible to see that the second plan was an improvement over the first both in terms of scope and effect. It is doubtful that this would have been the case if the first plan had been largely unsupported by the Board in its appeal decisions. Had that been the case, the Commission's authority would have gradually been eroded to a point where neither it nor its policies would have retained credibility. In turn, that would have represented bad management on the Board's part since it had a duty to keep the commissions functioning effectively.

This is not to indicate that the relationship between the Board and the C.R.P.C. did not undergo some strife. The Commission's use of outline plans to circumvent the appeal process showed one manifestation of its dissatisfaction with the Board's ability to grant variance. That notwithstanding, the planning system recognized the need to provide variances in individual cases and the Board appeared to do an adequate job of balancing the effects of its variances against the advance of public policy. If variances had not been granted, plans could have been implemented more smoothly, but at a high cost to some individuals and at a similarly high cost to the notion of fair play in the advance of public policy.

For public planning policies to represent anything but a threat to landowners it has to be clear that exceptional circumstances will be taken into account. The power of variance removes, to some extent, the threat of the autocratic exercise of authority. The right to appeal exceptional circumstances is, however, but part of an orthodox framework designed to moderate the costs of the public interest to individual rights. The factor determining the quality of variance decisions is the staffing of quasi–judicial bodies to allow them to function in an arm's–length relationship with government. Here there is a real

point of concern because the members of the Alberta Planning Board, unlike the general run of administrative boards, are drawn exclusively from branches of the provincial civil service interested in development. So not only is the Board composed of non-elected persons, their appointment is also occasioned by their involvement with various departments of government. The situation calls into question the wisdom of using the Board (which is, after all, the supervisor of the provincial government's interests in land development) to mediate between private rights and public interest. Even so, the Board's mediating role between private right and public interest has not been challenged greatly. The Board continues, without the aid of much public scrutiny, to impose (serve) the particular conception of the public interest and set standards for its advancement.

The evolution of standards for the public interest is the other major part of the framework for the mediation between public initiative and private right. While it might be supposed that the determination of community standards would involve the public, this is frequently, as with the Alberta Planning Board, not so. The task of setting standards is complex since there is never a single conception of the public interest. All too often, the view that prevails is the particular interest of whatever institution has been delegated public authority, advancing its own policies to achieve its own vision of the public interest. Central authorities, such as the Board, by virtue of their position are privy to many conceptions of the public interest, which they must coordinate and moderate. Implicit in the duty is the notion that central authorities impose their own views of public policy onto the subordinate authorities who implement them. Central authorities, therefore, function to limit local autonomy in the setting of community standards. This is not necessarily a negative process but is one which would, ideally, require public participation.

The central authority's position is one of trust and the power they wield is, typically, mistrusted by many who fear that their coordination of policy can lead to the erosion of local autonomy. The Alberta Planning Board honoured the spirit and intent of local plan policies in its appeal decisions, but not to a point where it was prepared to sacrifice provincial standards of personal liberty in the use of land. Deciding what was just in the advancement of local planning policies without causing undue hardship for individuals was a considerable task but one that the Board seemed to perform well in Rocky View situation.

The C.R.P.C.'s success with the implementation of its regional plan policies is further supported by a recent study of land subdivision in four regional planning commission areas of the province (Thompson, 1982). The study dealt with all of the subdivision applications made to the Edmonton, Battle River, Red Deer and Calgary Regional Planning Commissions for the years 1977-79, inclusive. Of a total number of applications of about 5000, those from the C.R.P.C. accounted for only about one-tenth. That figure was very low, particularly since applications to the E.R.P.C. were four times as great. Clearly the C.R.P.C.'s policy of restricting subdivision was relatively effective. The Commission also had the lowest number of its decisions appealed to the Board: this with the highest proportion of subdivision applications approved without conditions, indicated that landowners respected the C.R.P.C.'s determinations. Fewer leaves to appeal also resulted in fewer opportunities for the Board to influence the implementation of the Commission's land use policies. This situation, however, must have arisen through the satisfaction of subdivision applicants and good management from the Commission. Given those conditions, the Board's intervention was hardly required.

While the Board did not seem to alter the Commission's notions of the public interest through its appeal determinations, there is increasing concern that it may be doing so through the regional plan approval process. This exercise of Board authority is, naturally, worrisome to the commissions as well as to the urban municipalities. At issue is the fact that the Board has recently rejected the C.R.P.C.'s first regional plan (amongst others). It is believed that the C.R.P.C.'s plan was rejected because it was too prescriptive. Should the plan be made less prescriptive through the Board's intervention, rural municipalities will effectively gain a more prominent voice in decisions affecting the development in their jurisdictions. At the same time, some of the Commission's authority may be lost. The spectre of rural muncipalities having greater authority to, perhaps, allow increased levels of development is of general concern to the commissions as they see that such an event could undermine their long-range goals. Urban municipalities too, feel that a growth in rural municipal autonomy with respect to planning threatens to increase urban fringe development with all of its potentially negative impacts upon the ease of servicing, future annexation, and urban economic viability.

If the Board is, indeed, changing the balance of planning powers and the direction of planning interests, however subtly, the effects upon the commissions will be considerable. The Municipal District of Rocky View, for example, has long argued for the control of subdivision within its jurisdiction, in much the same manner as that enjoyed by urban municipalities. Many rural municipalities have the financial and administrative resources to assume subdivision approval authority and at least one rural municipality (the County of Parkland) has subdivision authority at this time. Further, it is unrealistic to believe that subdivision authority can or should be kept from municipalities capable of managing it. But if and when subdivision authority is transferred the commissions will lose their chief tool of plan implementation, and the base of the regional planning system, which is fragile at best, would be further undermined.

If the long-range time frame for planning policies furnished by the commissions is in jeopardy, the Planning Act may have to specify the long-range objectives to be addressed by planning instruments. Such a development could lead to increased public contribution to the drafting of major policies and the Board could reasonably continue in its present capacity to fund planning and approve rural plans under the Act. The appeal tribunal, however, might well increase its credibility as the moderator of public and private interests by becoming essentially separate from the more administrative functions performed by the Board. Attendant with any such separation would be changes to the appeal tribunal's membership to provide a better representation of the public.

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9. APPENDIX 1: Denied Subdivision Appeals against the Farmland Conservation Policies

Denied Appeals

73-C-482

74-C-256,277,278,331,485,496,528,551

75-C-18,100,109,217,397,407

76-C-51,57,71,84,137,167,211,256,464,471

77-C-322,323,375,380

78-C-42

Total: 30 Appeals

Denied Appeals which were also opposed by the Municipality

73-C-482

74-C-256,277,331,485,496,528,551

75-C-100,109,397,407

76-C-51,57,71,84,137,167,256,471

77-C-322,323,375,380

78-C-42

Denied appeals which were not opposed by the Municipality

75-C-217

76-C-211

Denied appeals for which the Municipality did not state an opinion

74-C-278

75-C-18

76-C-464

Reasons for Board Denial:

fragmentation of farmland

73-C-482

74-C-277,331,485,496,551

75-C-407

76-C-57,71,84,167,471

77-C-380

land quality too high to allow subdivision

74-C-256,485,496

75-C-100,407

76-C-84,137,471

77-C-375

subdivision was not believed to enhance agricultural productivity

74-C-528

76-C-57,71,256,464

77-C-323

78-C-42

subdivision would have represented an intrusion into unsubdivided territory

74-C-551

75-C-109,397

77-C-322,375,380

subdivision would be contrary to the spirit and intent of the plan

75-C-217,397

76-C-51,84,211

10. APPENDIX 2 : Approved Subdivision Appeals against the Farmland Conservation Policies

Approved Appeals

73-C-431

75-C-138,140

76-C-40,124,273,276

77-C-267,304,482

78-C-04

79-C-145

Total: 12 appeals

Approved appeals which were opposed by the Municipality

75-C-138,140

76-C-124,376

77-C-267,304,482

79-C-145

Approved appeals which were not opposed by the Municipality

73-C-431

78-C-04

79-C-145

Approved appeals for which the Municipality did not state an opinion

76-C-40,372

Reasons for Board Approval:

subdivison would not impare agricultural production

73-C-431

75-C-138,140

76-C-40

77-C-267

78-C-04

79-C-145

compassionate circumstances

75-c-140

76-C-124

77-C-482

land was believed too poor for agricultural production

76-C-376

77-C-304

subdivision approved in spite of the policy

76-C-372

Appeal for which the Board was unable to render a decision

76-C-261,330